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The Federal Problem in India

By

D. R. Gadgil

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1947

and as attaining the status of independent sovereign states if they chose not to accede. It was emphasised that the attempt should be to build a democratically sound and strong federation and that as quick a withdrawal as possible of communal weightage in representation should be made. Any weakening of the Centre to placate Muslims or the adoption of any so-called regional schemes was, it was argued, contrary to the permanent interests of the country.

The proposals of the Cabinet Mission are based on the assumption of a fundamental divergence of culture and interest between Hindu and Muslim. The scheme of the Mission is avowedly intended to achieve Pakistan without partition; and as it seeks to avoid the partition of India it is able to avoid the partition of Bengal and the Panjab. The scheme acknowledges fully the right of non-accession of the Indian States and leaves them potentially independent sovereign states on the withdrawal of paramountcy. The Mission's proposals had as their main aim, avoidance of giving the right of non-accession to Provinces, but the Provinces are given the right of secession after ten years. The Mission's statement makes a beginning with the non-application of the principle of weightage to communities, and this in the vital matter of the formation of the Constituent Assembly. The Mission proposes a regional division; the basis of the region is, however, not pseudo-scientific but frankly political. The Mission proposes an "agency" centre. This is the most contentious part of the Mission's scheme. It is possible to reconcile oneself somewhat to an agency centre on two sets of considerations. It has been argued that the Centre in an Indian Federation must have strength enough to direct economic planning and to prepare for effective defence. Under the proposals of the Mission the former can become the function of Group Governments and as the Groups are made up of Hindu and Muslim majority Provinces, the result is not much worse than in the event of a partition. In regard to Defence, the position is undoubtedly serious. It is, however, possible to take comfort from the fact that conditions of war in modern times have so rapidly changed that effective warlike operations are now possible only to a few large and rich units in the world. India is too poor to be able to maintain substantial armed forces even if the Indian Government at the Centre had all the necessary powers. All important international conflicts are likely, in the future, to affect the whole world; in these conflicts India could not play, by itself, a decisive part. It would have to become part of some scheme of world strategy and, in this event, the weakening of the Centre is not, perhaps, as great a disaster as it would otherwise have been.

The patience, the perseverance and the skill which the Cabinet Mission and the Viceroy brought to bear on their task compel admiration, which is matched only by amazement at the recklessness with which both the major Indian parties threw away the chance of a peaceful and smooth transition. Today, the situation remains as fluid as it was in 1945. However, the realistic approach of the Cabinet mission vests the proposals made by them with permanent interest. An attempt at finding a solution of our political problem must begin with a careful study of these proposals which is attempted here, together with an appreciation of the fundamentals, which from the author's point of view have been presented in the earlier publication.

This study was originally planned and begun in June 1946. Some progress was made with it and the draft of the first six sections was completed by the end of August, when the work suffered interruption. It was resumed after the middle of November and the work was almost complete by 10th February, 1947. The announcement of His Majesty's Government of 20th February has changed the existing situation and made definite some issues which were uncertain before. It was, however, considered neither easy nor necessary to recast the original text which, therefore, reflects and analyses the political situation as it existed on 10th February, 1947.

New Delhi.

D. R. GADGIL.

12th March, 1947.

P. S. It had been expected that this study of the federal problem would be published by about the end of April before a final decision had been reached regarding the division of India. Publication was unavoidably delayed; and the rapidity with which the new plan of settlement was evolved makes the discussion contained in this study out-of-date in one important respect.

There are, at least, four important aspects of the federal problem in India. These are: (1) the incorporation of Indian States within an Indian Union, (2) the composition of federating units, (3) the division of powers between the Government of the Federation and those of the federating units; and (4) the problem of the relations between the two major communities brought to a head by the Muslim demand for a separate state. The last overshadowed

all others in political debate in recent years. Consequently, it is treated in special detail in this publication. The decision to form two separate states from among the British Indian Provinces takes away the immediate significance of a great deal of the writing in this regard. Even so discussion of this question may not be found entirely useless for an understanding of the continuing problems.

Though a decision has been taken regarding the division of the country, all the other constitutional problems discussed in this publication still remain with us. The problems of the incorporation of Indian States and the composition of federating units now take the leading position. The problem of the powers of the Union assumes crucial importance in relation to the incorporation of the Indian States within the Union. In view of suggestions emanating from responsible quarters for restricting, even after the division, the powers of the Centre to the subjects mentioned by the Cabinet Mission, and in view of the talk of the revival of something like the scheme of the 1935 Act for accession of Indian States, the discussion of these matters in the following pages as well as in the previous publication may not be considered unnecessary. The formation of new Provinces is an urgent problem and it is hoped that the insistence in what follows on treating the formation of federating units and the incorporation of Indian States as one integrated problem will receive due attention.

24th June, 1947.
Poona 4.

D. R. GADGIL.

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I. STATEMENT OF THE CABINET DELEGATION AND ITS ACCEPTANCE

The main characteristics of the Indian federal problem are fully exemplified by the proposals contained in the statement by the Cabinet Mission to India and H. E. the Viceroy dated 16th May, 1946. The statement includes recommendations regarding the basic form of a Federal Constitution for an Indian Union on which a surprising degree of agreement was at least apparently for a period. A careful and detailed study of the proposals of the Cabinet Mission¹ is then an important and essential part of any speculation regarding the prospects of an Indian Union. Before beginning such a study it would be useful to have some idea regarding the circumstances in which the proposals were put forward and in which they proved, at least temporarily, acceptable to various parties.

BACKGROUND OF THE STATEMENT

The proposals of the Cabinet Delegation are in no sense an award like, for example, the communal award of Mr. MacDonald. A scrutiny of their contents will show that no attempt was made by the Cabinet Delegation to give a finding or judgment based on definite principles. All that the Cabinet Delegation was evidently anxious to do was to find a middle position between those occupied by the two strong parties in India, and to formulate this in such a manner that it might appear not unacceptable to either of the two parties. The contents and in many respects even the phrasing of the Delegation proposals can be traced, in a large measure, to the communications that passed between the Delegation and the leaders of the Congress and the Muslim League during the course of the protracted negotiations. The use, in many cases, of the very words employed by the leaders of the two parties gives an appearance of acceptance of their respective positions in specific contexts, and this was no doubt helpful in bringing about the acceptance of the

¹The statement and the proposals are referred to, for short, as those of the Cabinet Mission or Delegation, throughout this publication. This should not, however, be allowed to obscure the important part obviously played with regard to them by H. E. the Viceroy.

proposals as a whole by these leaders. It is clear finally, that barring the one dominant British interest, that of keeping up some form of an Indian Union, the Delegation did not attempt to pronounce definitely on all the major points at issue, and that it did not even sufficiently clarify the proposals in respect of some of them.

In justification of the course taken by the Delegation, it might be said that the Delegation could not set itself up as an arbitral authority and that if it had assumed such a position, this might actually have led to a reaction highly unfavourable to its ends. The Delegation had, by a series of negotiations, got the protagonists to define their positions and had, through a major concession made by the Muslim League, considerably narrowed the difference between the two. It had, however, failed in its attempt to get the two parties to reach an agreement directly by some process of splitting the difference. Therefore, while not assuming the position of an arbitrator, the Delegation put forward a scheme which in effect split the difference in such manner that the acceptance of the scheme would not compromise too much the position already taken up by either party to the dispute. It is only on some supposition as this that the phrasing of the Delegation's proposals, the wholesale borrowings of parts of it from the suggestions put forward in previous communications by the two parties and the deliberate vagueness on some crucial points could be understood or justified.

CONDITIONS OF SUCCESS

If the above is a fair characterization of the origin and purpose of the Delegation's proposals, then their successful carrying out involved certain underlying conditions. Both parties, while unwilling at an earlier stage to reach a compromise amongst themselves, should have definitely agreed to accept the proposals of the third party as the unavoidable basis for working out the future. Later negotiations could progress smoothly only if the two parties abandoned their earlier irreconcilable positions and resolved to work the new scheme in, at least, formal amity. Without a minimum of goodwill and an assumption of good faith the intervention of the Cabinet Delegation and the formulation of its proposals could serve no purpose. The proposals did not and could not solve all important, outstanding questions at issue. It only provided a basis for raising a structure by agreement; and unless the basis was accepted in good faith and there was a minimum of goodwill about the work relating to the

building of the future structure, the efforts of the Cabinet Delegation were doomed in advance to be fruitless.

The proposals of the Cabinet Delegation could thus ease the situation only if it were assumed that the deadlock reached at the Simla Conference (1946) was temporary and incidental, that it was not the manifestation of a permanent incompatibility in aims and methods, but was the result of certain pronouncements or steps from which particular leaders found it difficult to recede at the particular moment. The intervention of a third party and the suggestion of a mediatory formula is undoubtedly helpful in *ad hoc* difficulties and temporary deadlocks. For, then each party can claim partial victory, claim inevitability for its concessions, and proceed with the interrupted work of negotiations without loss of face. That, however, the fundamental situation in India was not that of a temporary deadlock and that the real differences were too considerable to be got over by the occasional intervention of a third party was made clear by the events following the acceptance of the proposals.

Whatever the difficulties presented by a strict legal interpretation of the Delegation's proposals might be, the essence of the compromise suggested by the Cabinet Delegation was unmistakably plain. On the one hand, the Muslim League gave up its demand for an independent sovereign state and accepted a Union for all India; on the other, as a price for this major concession, the government of the Union was confined to a minimum of subjects, and intermediate political organisations were set up making possible separate blocks of Muslim provinces and, also, provision was made for an opportunity to reconsider the whole situation at the end of ten years. The compromise entailed the giving up of vital positions on either side. Actually, neither side appeared to accept this fact. The Muslim League at the time of acceptance declared its renewed faith in Pakistan and characterised the compromise as only a temporary intermediate position, and the Congress announced that in accepting the proposals it had made no commitments and that it was entering the Constituent Assembly only in order to attain its declared objectives. Very soon Congress lawyers were pointing to the weaknesses in the provision regarding the formation of Groups in the proposals of the Delegation, and it was clear that on this important point there was bound to be a severe clash at the very outset. In the event, the Muslim League reconsidered its acceptance of the proposals of the Delegation and matters reverted to the normal position in Indian politics, that of deadlock.

COMPARISON WITH REGIONAL PLANS

It should be noted that though the scheme of the Cabinet Delegation has a close family resemblance to the earlier regional schemes such as those of Sir Sikandar Hayat Khan and Professor (now Sir Reginald) Coupland, it also differs in one or two striking features from them. The Delegation lays no claim to a pseudo-scientific regionalism. The regional schemes tried to solve the Hindu-Muslim problem by pretending that a regional rearrangement accidentally lent itself to a disposition of territories and a redistribution of political areas which would meet the Muslim point of view. The Delegation proposals have the merit of avoiding such pretence. They frankly admit that the problem is one of meeting the Muslim demand for certain territories to be placed under dominant Muslim control. Therefore, they group the provinces separately on the basis of Muslim and Hindu majorities. Secondly, the list of subjects given to the Union Government is reduced to a minimum in the Delegation's proposals, and is also differently composed. In the Coupland scheme, customs was a Central subject and it was argued that it was not necessary for even railways to be centrally controlled. In the Delegation's scheme, on the contrary, the subject of communications is given to the Centre but customs is denied to it. It is possible that both the British defence and the Muslim League point of view had something to do with this substitution. A unified customs regime initiates and perpetuates a commonness in economic policy which the Muslim League might have wanted to avoid. On the other hand, Central control of communications would fit in well with the Muslim need to keep their two Groups of distant areas in touch with each other. A Union Centre controlling communications would take the place of the highly impracticable corridor.

ACCEPTANCE BY MUSLIM LEAGUE

It is easy to see why the Muslim League should have accepted the proposals of the Delegation. The immediate objectives that the Muslim League had placed before itself were strictly limited in scope. The Muslims had not interested themselves in the struggle between the Congress and the British; presumably because they were convinced that the British would, in any case, hand over power to Indians in the post-war period. The Muslims concentrated their attention on the political future of their own community and the regions defined by themselves as the Muslim regions. The provinces

of N. W. F., Baluchistan, Sind, the Panjab, Bengal and Assam were said to be Muslim provinces. The attainment of the status of an independent sovereign state for the Muslim region, so defined, and provision for the maintenance of close relations between the two separate—the Eastern and the North-Western—blocks within them was the declared goal of the Muslim League. The offer contained in the proposals of the Cabinet Delegation brought the Muslim League at the nearest point to this goal that it could approach by the method of political negotiation only. It was, perhaps, the only possible way in which Muslims could obtain control over all the six provinces claimed by them. The Cabinet Delegation has itself emphasized the difficulty of the inclusion in Pakistan of Assam and the non-Muslim parts of the Panjab and Bengal. To achieve this inclusion and control of non-Muslim areas it was necessary to agree to some compromise. Also intercommunication between the Eastern and the North-Western Groups could not be achieved in any other manner. Without these two parts being in some way related to a whole, which also embraced the intermediate territory, their active association together was obviously difficult. The main contentions of the Muslim League were accepted in substance in the proposals of the Delegation. While the Union Centre was kept as weak as possible, there was a definitive and separate grouping of Muslim provinces as such, and even in principle the Delegation accepted the necessity of assuring the Muslims "the control in all matters vital to their culture, religion and economic or other interests." Special attention should be paid to this reference to "economic interests." It is obvious that conceding the position that the economic interests of a community are apart from those of others is tantamount to conceding almost the whole of its right to independent statehood. The acceptance of the proposals by the League was also possibly influenced by the provision for a reconsideration of the situation after ten years. To get Group constitutions working and to get Groups under full control could lead to the formation of quasi-sovereign states of the type that the League had always talked of. Given sufficient majorities in these Groups for the ten year period, sentiment could be worked up and entrenched positions built up so that an entire separation could be easily obtained, if so desired, at the time of the revision. As a matter of fact, as Mr. De Valera's tactics have taught politicians, it is possible in certain positions of power to defy formal external control and act unilaterally. Thus it is not difficult to understand why the Muslim

League should have given its consent, initially, to the proposals of the Cabinet Delegation.

ACCEPTANCE BY CONGRESS

It is, however, difficult to understand why the Congress should have accepted the long-term proposals of the Cabinet Delegation. The proposals undoubtedly enable the geographical unity of India to be maintained, but they do not make it possible to strive for any of the numerous objectives relating to the development and progress of the whole country which all enlightened administrations must in the future place before themselves. Consideration for the defence strategy of the British Empire cannot have influenced the decisions of the Congress. Also it may be assumed that a mystic faith in Indian integrity is not included in the beliefs of the Congress and that Indian integrity that might be desired by it would be desired for some concrete and defined ends.

A variety of circumstances might have led to the acceptance of the proposals of the Delegation by the Congress. Initially, there was perhaps an insufficient appreciation of their limitations and significance; afterwards, the decision to accept might have been reinforced by consideration of the alternative interpretations rendered possible by the wording of the statement. Also, there was the urge to end a position of stalemate and to gain a point of vantage for further effort in the future. Vague notions as to a natural increase of power once a centre was established and as to the possibilities open to a "sovereign" Constituent Assembly might all have helped in the same direction. Later events, perhaps, brought disillusionment in many respects. This makes it all the more necessary to examine carefully and in detail the implications of the structure recommended by the Cabinet Delegation. We might begin with a consideration of the powers vested in the proposed government of the Indian Union.

II. THE SCOPE OF UNION SUBJECTS

The subjects dealt with by the Union are specifically mentioned and it is expressly provided that all subjects other than the Union subjects and all the residuary powers should vest in the Provinces. The resulting scheme of the distribution of powers is like that in Australia and the U. S. A. This method leaves to the Provinces a mass of exclusive powers which could not be invaded or interfered

with by the Union authority, and also leaves to them in addition certain powers as to matters within the Union's sphere, to pass laws not inconsistent with the Union laws. The strength of the Union will depend on the total of the powers given to it under each of the subjects. In order to assess this total, the likely scope of powers in each subject may be illustrated with reference to their detailed enumeration given in the constitutions of other federations and in the Government of India Act, 1935. The Cabinet Mission proposed that "there should be a Union of India embracing both British India and the States which should deal with the following subjects: foreign affairs, defence, and communications; and should have the powers necessary to raise the finances required for the above subjects." (Para 15 (1))

FOREIGN AFFAIRS

Three items from the 7th Schedule, list one, i. e., the Federal Legislative List in the Government of India Act, 1935, would obviously fall under this head. These are numbers 3, 17, and 49.² With some stretching of the meaning of the terms, items 19 and 44³ could perhaps be also included. The powers mentioned in this connexion in the constitutions of the U. S. A., Canada and Australia and the more recent federal constitutions of the U. S. S. R. and Brazil may further be indicated. In the U. S. A. constitution, the powers given to the Congress include powers "to regulate commerce with foreign nations," "to establish a uniform rule of naturalization," "to define and punish piracies and felonies committed on the high seas and offences against the law of nations"; these might all be supposed to fall within foreign affairs. Section 91 of the British North America Act, 1867, refers only to one subject "naturalization and aliens," which would definitely be connected with Foreign Affairs. Section 51 of the Commonwealth of Australia Constitution

² (3) External Affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

(17) Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom; pilgrimages to places beyond India.

(49) Naturalization.

³ (19) Import and export across customs frontiers as defined by the Federal Government.

(44) Duties of customs, including export duties.

Act contains, however, a much larger number of items and these are as follows:

External affairs, trade and commerce with other countries, bounties on the export of goods, fisheries in Australian waters beyond territorial limits, naturalization and aliens, foreign corporations, immigration, emigration, and influx of criminals.

In the constitution of the U. S. S. R., the following find a place among powers of the Union:

The representation of the Union in international relations, the conclusion and ratification of treaties with other States, foreign trade on the basis of a State monopoly, laws on the rights of foreigners.

The Brazilian constitution enumerates the items thus:

To maintain relations with foreign countries, to nominate members of the diplomatic and consular corps, to enter into treaties and international conventions; to decide definitely regarding the limits of national territory, the naturalization, entry and departure from national territory, immigration and emigration, passports, expulsion of foreigners, extradition, foreign commerce, exchange and transfer of funds abroad.

A study of these lists shows that a number of items obviously fall within the sphere of foreign affairs. Firstly, there is the representation of the country abroad and the negotiation of treaties and agreements with other powers. Secondly, all questions of immigration and emigration and those connected with naturalization and aliens. Thirdly, there is jurisdiction beyond territorial limits and lastly, questions connected with foreign commerce and with the exchange and transfer of funds abroad. Little difficulty would arise regarding the propriety of inclusion or the interpretation of the scope of the first three.

The nature of the power in respect of foreign commerce, etc., must be, however, examined in some detail. No direct power is given to the Union in respect of foreign commerce or foreign exchange. This does not, however, mean that the power of regulating foreign commerce or exchange is denied to it so long as and to the extent that it could be proved that the subject "foreign affairs" necessarily included such power. In this connexion no importance could be attached to the fact that in the constitutions of other federations power over foreign commerce is specifically

mentioned apart from foreign or external affairs. The enumeration of powers in these constitutions is not made strictly in terms of mutually exclusive categories. Also, there are examples where foreign commerce is not mentioned apart from foreign relations and where the one was obviously included in the other. Article 6 of the German constitution of 1919 enumerates the sole legislative powers of the Federal Government. "Foreign Relations" heads the list in this article, which does not, however, contain any specific reference to foreign commerce, though it mentions separately the Customs Department.

Foreign affairs, it should be noticed, is not a single subject like, say agriculture, or even a single group of subjects like "communications." It is a comprehensive class and includes all subjects which have an aspect of relations with other countries and includes them only in the context of that relation. Foreign affairs is very wide and covers all relations with the outside world, and it necessarily includes all external economic relations. No Government other than the Union Government would be competent to regulate external economic relations and the Governments of Groups or Provinces could not directly enter, for example, into trade agreements with other countries. Any treaty, compact or convention, whatever its nature, with any foreign country—or international authority—could be entered into only by the Union Government. All obligations accepted on behalf of the whole or any part of the territory comprised within the Union would be accepted by the Government of the Union. All legislative or administrative acts which seek to regulate the interests, connexions or affairs of Indian Governments or nationals abroad, would be performed only by the Union Government. Territories or persons, goods, services or funds may all become affected by the impact of foreign relations and to the extent that this happens they would fall within the jurisdiction of the Union. There is, therefore, little doubt that if regulation is to be attempted, international obligations undertaken, or the terms of exchanges settled regarding any foreign commerce in commodities or in services, in money or in credit, the Union Government would be the only competent authority in this behalf. In acting within this sphere, the Union Government may have for a variety of purposes previously to consult Provincial or Group Governments or act in constant collaboration with them. The practical need to do this cannot, however, be taken to affect its absolute powers within the field of foreign affairs, including external economic relations.

The position in regard to the customs tariff is equally not clear. It might be held that the levy of any duty on an article of export or import affected external economic relations and was, therefore, a part of foreign affairs. On the other hand, it might be argued that the subject included only that aspect of foreign commerce which was affected by relations entered into or agreements made with foreign countries and did not, therefore, embrace the whole field of customs duties. Nothing in the proposals of the Cabinet Delegation indicates that a customs frontier between Groups or Provinces is ruled out by the scheme. In almost all federal constitutions the regulation of interstate commerce is, equally with the commerce with foreign countries, an attribute of the Federal Authority. No mention of interstate commerce is made in the proposals of the Cabinet Delegation. It is, therefore, obviously not within the competence of the proposed Indian Union. A Province or a Group of provinces would then be at full liberty to impose duties or restrictions on trade between Provinces or between Groups. Would duties on imports and exports necessarily fall completely within the sphere of the Union's jurisdiction? In so far as commerce with particular countries is carried on under definite treaties or agreements with them, the competence of the Union Government would be unquestioned. Group or Provincial governments could not have powers to alter these terms. But within the sphere within which international trade agreements did not operate, it might be argued that the Provincial or Group governments would have the power to levy or vary the rates of import or export duties.

The position regarding the regulation of currency is similarly ambiguous. Representation on an international monetary fund or bank would, no doubt, rest with the Union, and the fixation of rates of exchange and agreements with other countries relating to them would obviously fall only within the competence of the Union Government. All direction and regulation of the transfer of funds abroad would also rest with the Union. This should prove sufficient to give to the Union authority and power relating to the issue and management of currency for the country as a whole. However, it would be still possible for a Province or a Group government to issue currency, including paper currency, of its own, for circulation within its own area of jurisdiction, and the regulation of banking would completely rest with these governments. Because of this, the monetary authority of the Union might find it impossible to implement all its decisions fully throughout the territory of the

Union except with the willing co-operation of Province and Group authorities.

Another question which is relevant to raise here, but which is somewhat difficult to decide, is the regulation of the entry of foreign capital. Obviously no Group or Provincial government could itself raise a loan abroad or enter into any economic or financial agreement or commitment with foreign governments or individuals. Also, the regulation of foreign corporations might fall distinctly within the Union's sphere. It is doubtful, on the other hand, whether the regulation of the participation of foreigners in corporations formed within the territories of the Groups and the Provinces could all be done by the Union Government. If it is not possible to close this loophole, the operations and the entry into the country of foreign capital would be subject to varying conditions from region to region and might lead to some measure of competitive legislation. It is likely that an overall regulation of transfer of capital between country and country might come as a result of international agreements and the operations of international organizations. In this case, the sphere within which Group or Provincial governments have the liberty to act would be severely restricted. On the whole, it might be said that through its power over foreign affairs, the Union Government might be able to influence, at least indirectly, an important sector of economic life, and this sector would be the larger and the more influential, the more pervading and inclusive became the operations of international economic organizations.

Another important issue in connexion with the scope of foreign affairs is the extent of the legislative power given to the Union because of the power to enter into treaties and agreements with other countries. In discussing this subject it would be best to start with a threefold classification of authorities with differing competence that might be contemplated in connexion with constitutions of federal governments: (i) authorities competent to legislate upon a given subject for municipal purposes; (ii) an authority competent to legislate on the same subject for giving effect to international engagements and (iii) an authority competent to undertake an international engagement.⁴

We are not concerned with the distinction between (ii) and (iii). It is agreed that the ratification of a treaty by the authority

⁴ Cf. C. W. Jenks: *Constitutional Capacity of Canada to Give Effect to International Labour Conventions*, I and II. *Journal of Comparative Legislation*, Vols. XVI and XVII, 1934-1935.

competent in this behalf does not by itself alter the law of the land and that, for this purpose, the competent legislature must act appropriately. The division of functions as between (ii) and (iii) may occur within even a Unitary Constitution and is not peculiar to federations.⁵ For our purpose the significant difference is that between (i) and (ii), and it is necessary to find whether in the proposed Indian Union the Union legislature could be placed in the category classified as (ii) above. Reference may first be made to the position in other federal constitutions.

The position in the U. S. A. appears clear. The treaty-making power of the U. S. A. Government enables it to enter into any field of legislation to give effect to treaties irrespective of the division of powers between the Federation and the States in the constitution. However, this is the result not of any interpretation of the power of the Congress over foreign affairs, but is directly and separately provided for in the constitution itself. Article VI of the U. S. A. constitution lays down that "all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land." The U. S. A. example would thus not apply to any constitution in which no such specific provision is included. The special responsibility of the U. S. A. Senate in respect of foreign affairs and treaties is also a significant feature of the federal constitution of that country. As regards Canada, Section 132 of the British North America Act (1867) provided that the Parliament and Government of Canada shall have all powers necessary for performing the treaty obligations of Canada arising under treaties between the Empire and foreign countries. So long as the Dominion Government acted under these powers, it was held to be competent to enter the sphere of even exclusive provincial legislation to give effect to treaties. However, when Canada entered into treaty obligations with foreign countries directly, Section 132 was no longer held to apply. In the changed situation the Privy Council ruled that in spite of the Dominion Government possessing treaty-making powers and also the general powers for making laws for the peace, order and good government of Canada, "the legislative powers remain distributed." It added:

"If in the exercise of her new functions derived from her new international status Canada incurs obligations, they must, so far as legislation is concerned, when they deal with the

⁵Cf. Keith: *Governments of the British Empire*, 1935, p. 113.

provincial class of subjects, be dealt with by the totality of powers, in other words by co-operation between the Dominion and the Province."⁶

In Australia, the Commonwealth Parliament has legislative powers in respect to external affairs, and no special provision is made in the constitution regarding giving effect to obligations arising out of treaties. The extent of the power thus vested in the Commonwealth Parliament has not yet been fully defined by a judicial decision. In one case, however, a minority of the judges of the Supreme Court were prepared to hold that the Commonwealth had powers to implement through legislation treaties and conventions under its authority as to external affairs. The majority of the Court, however, did not commit itself to this view and even the minority insisted that in order to be valid, under this power, the Acts passed must exactly follow the treaty or conventions and that any deviation would be fatal.

It was perhaps, in view of this difficulty experienced elsewhere that the Government of India Act 1935 attempted to define clearly the effect of the treaty-making power. The item "the implementing of treaties and agreements with other countries" is included in the Federal Legislative List of the 1935 Act. However, by a special Section in the same act the effect of this power was strictly defined, and it was laid down that the "Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any Province except with the previous consent of the Governor or for a Federated State except with the previous consent of the Ruler thereof."⁷ It has been pointed out that because of the wording of sub-section (3) of this Section the restrictive effect of the provision was not considerable as the concurrent powers of the Federal authorities were fairly wide under the 1935 Act.⁸ In the constitution of the Indian Union no such large list of wide concurrent powers is expected to find a place. Therefore, if a provision similar to that of Section 106 of the 1935 Act is included in the new constitution, no extension of the legislative

⁶ Attorney-General for Canada v. Attorney-General for Ontario and others (1937).

⁷ Sec. 106 (1).

⁸ S. K. Dass: Canadian Experience and the Treaty-making Power in the Government of India Act 1935. *Journal of Comparative Legislation*, Vol. XX, 1938.

sphere of the Union will take place because of the treaty-making powers vested in it.

To sum up, treaty-making powers can be relied upon to bring within the competence of Federal Governments all legislation arising out of treaties, agreements, etc., only if special provisions exist in the constitution such as those of Art. VI of the U. S. A. constitution or Section 132 of the British North America Act. In the absence of such provision, the constitutional division of powers between the Federal and Provincial or State authorities may be said to define the limit of legislative competence in respect of agreements with foreign countries also. In view of the existence of Section 106 in the Government of India Act 1935, it is expected that those who favour a strict limitation of the powers of the Union will insist on a similar provision being included in the new constitution, and thus settle the question beyond doubt.

The representation of India abroad will undoubtedly lie with the Union under the proposed scheme, but, outside the sphere of Union subjects, the policies that the Indian representatives would expound and the decisions they would agree to would depend on the instructions not solely or chiefly of the government of the Union but of those of the governments of various Groups. The Indian delegation to an international food conference, for example, might even have to expound not one but two or three sets of different policies. The ratification of international conventions such as those relating to labour, could also not be guaranteed in advance on the advice only of the Union Government.

DEFENCE

Under defence would be included the following items in the list of federal subjects of the 7th Schedule of the 1935 Act: 1, 2, 29, 30 and 39.⁹ The defence powers of all Federations generally

⁹1. His Majesty's naval, military and air forces borne on the Indian establishment and other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment; central intelligence bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

2. Naval, military and air force works; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the

include the powers to declare war and make peace and the powers to raise, maintain and control all kinds of arms. The extent to which defence is held to include certain other things might be illustrated by reference to the wording of the powers in some federal constitutions. Section 51 of the Australian Constitution lists the following items: "the naval and military defence of the Commonwealth and the several states, the control of the forces to execute and maintain the laws of the Commonwealth." Section 119 lays down that "the Commonwealth shall protect every state against invasion and, on the application of the Executive Government of the state, against domestic violence." The constitution of the U. S. A. gives powers to Congress "to provide for calling forth the militia to execute laws of the Union, to suppress insurrections and repel invasions," and also to exercise exclusive legislation "over all places purchased by the consent of the legislature of the state in which the same shall be for the erection of forts, magazines, arsenals, dock yards and other needful buildings." The Brazilian constitution mentions amongst powers of the Union "to authorize the production and to supervise the commerce of war materials of whatever nature," and "the manufacture and commerce of arms, munitions and explosives." The immediate scope of the powers of defence is fairly well defined. The chief directions of its possible extension are (i) a sphere connected with internal security, (ii) control over areas where activities connected with defence works are carried on and (iii) the manufacture of and commerce in commodities intimately connected with defence operations. The field of defence has widened in all these directions in modern times because of the extension of the areas of operation of all types of arms and the sphere of productive activity concerned with defence operations.

The general responsibility for defence and security of a federal government has been held in all federations to vest it with very wide powers in times of war. As early as 1916 the Supreme Court of the

regulation of house accommodation in such areas, and within British India, the delimitation of such areas.

29. Arms; firearms; ammunition.

30. Explosives.

39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be. Extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

Australian Commonwealth upheld the power of the Commonwealth government to regulate, during times of war, economic activity in very considerable detail under its general power of defence. During the last war, also, defence powers have been held to be very wide by judicial interpretation; and though the courts have not been entirely uncritical, almost any regulation that could be presumed to have some connexion with the conduct of war has been held to fall within the purview of this power. The responsibility for defence would thus give the Union Government a very wide sphere of operation during the actual course of a war. On the other hand, it is equally true that the scope of these powers is held to be wide only during times of war; during times of peace this power has always been interpreted narrowly. In modern times the sphere of the Union Government because of the large number and variety of bases required for defence purposes and because of many types of production connected with defence operations, might be much wider than before. However, it could cover only a small fraction of the total area of economic activity in times of peace.

COMMUNICATIONS

With communications we come to a subject given to the Indian Union which has a content much wider than that included in the powers of any other federal authority. Under this heading could be included not only a great many of the items in list 1 of Schedule 7 of the 1935 Act such as 7, 18, 22 to 26,¹⁰ but some also in list 2, for example, 18, and in list 3, for example, 20 and

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LIST 1

7. Posts and telegraphs, including telephones, wireless broadcasting and other like forms of communication; Post Office Savings Bank.

18. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

24. Aircraft and air navigation; the provision of aerodromes; regulation and organization of air traffic and of aerodromes.

25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

26. Carriage of passengers and goods by sea or by air.

32.¹¹ Through its power over this subject the Union Government would control rail and road communications, navigation and shipping, posts and telegraphs, airways and airships, beacons, buoys, lighthouses, customs houses, warehouses, ports and harbours and all other incidentals like port, river and railway police, connected with their maintenance. This is undoubtedly a very large list of subjects and a vigorous and active Union Government might be able to help economic development in most parts of the country through a well-planned policy relating to the facilities for transport and the rates charged for them. However, it must be remembered that the influence of a communications policy on economic development would be largely indirect. Transport plays an important part in plans of production and distribution, and the transport authority can materially help or hinder the success of general economic planning. Economic controls or development plans cannot, however, be initiated from the transport end. Further, while all other economic activity is within the sphere of the Provinces and only communications are controlled by the Union, Central policy would necessarily be colourless. It could not easily adapt itself to all the varying aims and methods of the differing Group or Provincial policies, and it would have to avoid giving the impression of discriminating between the different means of transport or types of commercial activity or between areas.

FINANCE

Finance for the conduct of all these powers is not a separate power but is included in the ambiguous phrase "and should have the powers necessary to raise the finances required for the above subjects." The justification for this phrase is to be found in an important difference of opinion between the League and the

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LIST II

18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

LIST III

20. Mechanically propelled vehicles.

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on inland waterways.

Congress. The former maintained that the Union should have no taxing powers of its own but should raise resources presumably by contributions from provinces. The Congress leaders insisted that the Union should definitely control customs and should have the power to raise revenues in its own right. If the point of view of the League is accepted, the Indian Union would be no more than a confederation. It would leave India in the position occupied by the States of America before the adoption of their present constitution. However, even if the Union is ultimately vested with taxing powers, it is unlikely that these powers would be wide.

In most other federations the power of taxation given to federal authorities is either very wide or is absolute, i. e., without any qualification or limitation being imposed on it. It is ordinarily not hedged in by reference to either limited and specific purposes or to special sources of revenue. The U. S. A. constitution gives power to the Congress "to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States." The Canadian constitution gives the Dominion Parliament authority for "the raising of money by any mode or system of taxation." The Commonwealth of Australia Constitution Act gives to the Parliament powers of "taxation" with only the qualification "but so as not to discriminate between States or parts of States." The U. S. S. R. has amongst the powers of the Supreme Council "the approval of the single budget of the U. S. S. R. and also of the taxes and revenues which serve to form the budgets of the Union republics and localities." In the Brazilian constitution there is an attempt at a distribution of sources of revenue. Certain important broad heads are given to the federal government, while a number of subordinate tax resources are reserved to the States. The Government of India Act of 1935 also follows the method of division of revenue resources.

It is not clear whether a proposal for vesting the Indian Union with general unlimited taxing power will prove acceptable. There need, however, be no objection to defining clearly the tax sources allotted to the Union. As a matter of fact it may be found convenient, in the Indian Union, to divide as far as possible heads of revenue between the Federation and the Provincial governments. Once, however, a tax power rests with an authority, its direction to make use of it should not be allowed to be questioned as a constitutional issue.

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The Union is to be vested with powers to raise finances required for the purposes of the three subjects: Foreign Affairs, Defence and Communications that are allotted to it. This manner of stating the power to raise finance necessarily imposes an important limitation on the authority of the Union; and the effects of this may be far-reaching. The Union has obviously no powers to raise finance not required for the above purposes. All taxing acts as well as all spending must be justified with reference to the three Union subjects. Only the U. S. A. constitution among the important federal constitutions, links the power to tax with the objective of expenditure. These objectives in the U. S. A. constitution are very broadly stated. They are "to pay the debts," "to provide for the common defence and general welfare." The last of these, "general welfare," is so comprehensive that little difficulty has been experienced in justifying any measure of taxation before courts of law. The U. S. A. Courts have consistently held that the power to appropriate, i. e., the power to spend the proceeds of taxation, is as broad as the power to tax and is, therefore, limited only by reference to general welfare. It has also been held, because of linking the power to tax with general welfare, that the power of the Congress to authorize moneys for public purposes is not limited by the legislative powers given to the Congress in the constitution. However, even in the U. S. A. the power of Federal authorities to act through the power to tax and to appropriate the proceeds of taxation has been found to be not altogether unlimited. The Supreme Court, even while interpreting the provisions liberally, has laid down that distinction must be drawn between one welfare and another and between particular and general, and these distinctions played an important part when the Agricultural Adjustment Act was held unconstitutional.

In view of this, even if the sources of revenue given to the Union prove ample, the power to tax and to spend may be subjected to a number of obstructive conditions. The Delegation proposals do not give the power to tax but merely power to raise finance; they also limit the use of this power to finances required for the three subjects. At least two important types of difficulties are thereby created which may be illustrated briefly. Firstly, with reference to acts of taxation. If finance is raised by taxation, the wording of the Cabinet proposals may lead to disputes relating to the manner in which particular tax proposals operate. A tax, inevitably, has other effects than those of raising revenue, and if

these other effects are found to be important, the Union, by imposing the tax, may be held to operate in the field beyond those of the subjects allotted to it. A customs duty levied with only a fiscal objective may have an unintentional protective effect—large or small. This might be held to make the levy of the duty *ultra vires* of the powers of the Union, and similar difficulties are bound to arise in respect of all major taxes, direct or indirect.

Secondly, it would not presumably be possible for the Union to raise funds in excess of its own strict requirements, and if it had any surplus funds its power to appropriate would be bound by the same conditions as its power to raise finance. That is, the Union would have authority to spend money directly or through an agent only for a purpose within the field of the three subjects given to it. If this happens, one of the most important means by which federal governments have in recent times enlarged the scope of their activities will be denied to the government of the Indian Union. The very broad taxing powers of federal governments have resulted in federal resources being usually more ample than the requirements of subjects directly within federal competence. Governments of federations have consequently found themselves with surplus funds. The federating states have usually been short of money, especially with the recent expansion of state responsibilities. Grants-in-aid by federal governments have, therefore, become very common and they have been one of the most potent instruments by which federal governments have exercised influence over broad spheres not directly under their purview. The conditional grants of the U. S. A. federal government have been used to induce states to fall in line with federal policy on a large number of questions. The severe encroachment of the tax field by the Dominion Government has been used as a bargaining counter in dominion-provincial relations by the Dominion Government of Canada. And the government of the Australian Commonwealth was able to use jointly its power to tax and to make grants and its war powers to compel the states to vacate the field of income taxation during the war. It is obvious that a strict interpretation of the wording of the Delegation's proposals would rule out the emergence of any system of federal grants in the Indian Union, and the financial powers of the Indian Union under the proposals of the Delegation would be vastly weaker than that of any major federation in existence in the world today.

It has been argued that the scope of the powers of the Union could be increased by presuming upon some inherent powers in a

national government and also by reference to implied or ancillary powers. The argument appears, however, to have little substance. For example, in the U. S. A. it has no doubt been held that in the external sphere the powers of the federal government are supreme and not liable to division and the Courts have said that the power to declare and wage war, to conclude peace, maintain diplomatic relations with other sovereignties must be taken as vested in the federal government as necessary concomitants of nationality, even if they had never been mentioned in the constitution. However, internally the federal government is a government of enumerated powers and it has been laid down that the Congress has no inherent sovereign powers in the realm of domestic legislation. The subject of implied and ancillary powers has been largely discussed in connexion with the powers of the Dominion Government in Canada. The structure and wording of the British North America Act favours a liberal interpretation of the powers of the Dominion Government. Section 91 of this Act gives powers to the Parliament of Canada "to make laws for the peace, order and good government of Canada" and enumerates classes of subjects over which the Dominion Parliament has powers without restricting the generality of the initial provision. Section 92 enumerates subjects of exclusive Provincial legislation, the residuary powers remaining definitely with the Dominion Government. It would be expected that in these circumstances a large field might, in time, be covered by implied or ancillary powers. In fact, the division of powers according to enumerated subjects has been strictly maintained. The jurisdiction of the Dominion to legislate under the general phrasing "peace, order and good government" has been held to exist only where the subject matter was outside those mentioned in Section 92, i. e., the exclusive provincial powers.¹² And the so-called ancillary legislation has been upheld by the Courts in cases in which the enactment in controversy dealt with an aspect of the subject upon which Provincial legislation would have been incompetent, in other words, the subject in the aspect dealt with fell strictly within one of the enumerated classes of Section 91.¹³ It is thus clear that where the powers of the Union are confined to named subjects and all the other powers vested with the Province, there is little hope of an expansion of Union powers through the doctrine of inherent, implied and ancillary powers.

¹² Cameron: *The Canadian Constitution*, Vol. II, (1930), p. 15.

¹³ Clement: *Law of the Canadian Constitution*, (1916), p. 506.

OTHER MATTERS

Finally, we might consider the effect on Union powers of the definition of fundamental rights incorporated in the constitution. It has been stated that if fundamental rights incorporated in the Union constitution cover a wide field, the Union Government would be automatically vested with large powers to ensure the observance of these rights in the territories of the Groups and the Provinces. To say this is, however, to misunderstand the working of federal constitutions. The declaration of fundamental rights would merely limit appropriately the legislative or the executive powers of the Union, Group or Provincial governments. It would, however, not increase the power of one government while limiting that of the other. In a federal constitution where there is a division of powers between two coeval authorities, the responsibility for seeing that powers are exercised within the proper limitations of the constitution does not rest with the Federal government. The Provincial government is not to be mistaken for a local government in a unitary state. In federal states the organ whose duty it is to limit action outside the constitutional sphere is inevitably the Judiciary. A large number of fundamental rights, widely defined, would increase work and powers of the Federal Judiciary, but not that of the government of the Union. A reference to the history of the interpretation of, for example, the 5th Amendment in the U. S. A. constitution will make this clear.

CONCLUSION

To sum up, the powers of the Indian Union would be confined strictly to the three subjects: Foreign Affairs, Defence and Communications. In times of war these powers would prove wide enough for most purposes and emergencies. In times of peace, on the other hand, the Union government would prove to have little real power to influence the economic life and development of the country, except to the extent that this is influenced by decisions of international organizations and except in a subsidiary manner through control over communications. The treaty-making power and the power to raise finance are not likely to increase the sphere of influence of the Union. Resort to the doctrine of inherent, implied or ancillary powers would prove ineffective and a wide definition of fundamental rights would also not lead to any extension of the authority of the Union.

III. PROBABLE GROWTH OF POWERS AND STRENGTH OF UNION

INEVITABILITY OF GROWTH OF POWERS

There are many who contend that once a Central government comes into being in a federation, the scope of its powers inevitably expands and that this happens in all federations. Modern technical developments have led to an increase in the scale of operations and centralization in all departments of life. The increasing powers assumed by modern states have extended the sphere of influence of all government authorities. This has *pari passu* led to the exercise by governments of all federations of powers not contemplated when the laws bringing these federations into existence were passed many decades ago. While this is true, it is equally remarkable how constitutional provisions have at each stage considerably impeded the operations of federal governments, and how their efforts at expanding the scope of their activities have been defeated in many instances. There has been no inevitability and no automatism about the tendency of federal powers to expand. It is, of course, hazardous to guess in advance how any particular set of constitutional provisions will work. Interpretations and conventions may mould future events and considerably influence the evolution of a constitution in particular directions. A study of the political circumstances in India and of the evolution of federal powers in other federations may, however, give some guidance as to the probable course of future events.

GROWTH THROUGH JUDICIAL INTERPRETATION: U. S. A.

A study of the manner in which constitutional powers have grown in other federations reveals a picture not of steady progress in the direction of expansion but of advance, as well as of stagnation, influenced by a large variety of factors such as the state of public opinion, the pressure of external circumstances, and the composition of the supreme tribunal. One of the main avenues through which powers of federal governments have grown has been a progressively liberal interpretation by the Courts of the powers given to federal authority by the constitution. A recent study of the growth of constitutional powers in the U. S. A.¹⁴ points to three main sources

¹⁴ C. B. Swisher: *Growth of Constitutional Powers in the United States*, (1945). Apart from the extension of federal functions by judicial interpretation

of expanding power through judicial interpretation for the Federal Government in that country. There are: (i) The power over Interstate Commerce, (ii) The power to tax and the related power to spend for general welfare, and (iii) The War power. Among these three the Commerce power has been more broadly interpreted than the taxing power. It is significant that protective tariffs have been justified with reference not to the taxing power but to the Commerce power. For the first hundred years of the constitution little use was made of the Commerce power to expand federal jurisdiction. During this time judicial interpretation had definitely brought navigation on internal rivers, lakes, etc., within the ambit of the Commerce power, and the discovery and expansion of railways, telegraphs and telephones greatly enlarged its scope. It was, however, chiefly after the Interstate Commerce Commission was set up that Federal Government began activity to regulate a large sphere of economic life. In spite of this very large extension of the Commerce power, judicial findings still reveal the influence of the fundamental duality inherent in federal governments. The Federal power is over interstate commerce; it leaves out a field of purely intra-state commerce which lies within the jurisdiction of the States. The growing complexity of modern economic organization may narrow this field very considerably; but there is a definite limit beyond which the Courts would not be ready to go at any particular time. A large part of the New Deal machinery was declared unconstitutional on the ground, among others, that it dealt with matters in intra-state commerce.

As there are sources of expanding power, there are also limiting factors. In this respect the constitutional history of the U. S. A. has a most instructive example in the judicial interpretation of the phrase "due process of law" occurring in the 5th and the 14th Amendments. During a period of over three decades after 1905 this phrase received an expanding meaning and was used by the Courts in declaring unconstitutional various measures of State and Federal regulation of wages and hours of labour, public utilities,

or, to a very small extent, by actual assumption, without challenge, of state functions by the Federal authorities, the main techniques of the extension of federal control over States in the U. S. A. have been listed as follows: (1) Grants-in-aid. (2) Use of State officials as agents of Government. (3) Federal Research. (4) Federal collaboration sought by States. (See Zink: *Government and Politics in the United States*, (1942), Chap. III. i. o. The Grant-in-aid is the most potent of these and this as well as most of the others, will not be available to the Government of the Indian Union for reasons explained in the previous section.

etc. It, in effect, became the instrument through which a *laissez-faire* philosophy in matters economic was enforced on governmental authorities. Since 1936 there has been a rapid diminution of the additional significance that had become attached to the phrase "due process of law," during earlier decades. The interlude, however, makes clear how forces of public opinion or vested interests may work through judicial interpretation of a written constitution, and how a uniform process of advance cannot be taken for granted.

AUSTRALIAN EXPERIENCE

In Australia the Commerce power has not played a very important part in the extension of powers of the federation. The difference is largely due to differences in the size and configuration of the States. The majority of Australian States cover very wide territories and the economic life of the different States is not closely integrated. Therefore, intra-state commerce is of much greater significance in Australia than in the U. S. A. and covers a very large field. Therefore, even though there has been no difference in interpretation of the powers between the U. S. A. and Australian Courts, the Commonwealth Government has not found it possible to legislate uniformly on commercial matters except such as are specifically included among Commonwealth powers.¹⁵ Industrial disputes, in Australia, extend beyond the limits of any one State to a very much larger extent than commerce, and a considerable extension of Commonwealth powers has come about through the power over conciliation and arbitration in relation to such disputes. The Federal authority has been enabled to regulate many economic matters through this power over industrial relations and because of the resulting jurisdiction of the Commonwealth Arbitration Court. The strength of the Labour Party in Australian politics has also helped the process. The unfettered power to tax has also been very helpful to the Commonwealth Government in expanding its sphere of influence. Indeed it has been claimed that the recent decision of the High Court declaring that the Commonwealth Parliament had the right to make tax laws and to levy uniform taxes for the whole nation marked the end of the Federal Era in the constitutional relations of the Commonwealth and the States.

¹⁵ S. Mills: *Thirty Years' Working of the Australian Constitution. Journal of Comparative Legislation*, Vol. XV, 1933.

CANADIAN EXPERIENCE

While the process in Australia has been rapidly and almost uniformly in favour of an extension of federal powers, the constitutional history of Canada is much more chequered. The structure of the British North America Act seems to favour an extension of federal powers much more than the arrangements in the Australian constitution. The Dominion Government in Canada has certain general powers and the residuary powers are not left with the Provinces. It has also the extraordinary power to disallow Provincial legislation. At the time of its adoption, the act was considered to be a great victory for those in favour of a strong Central government, and the early decisions of the Supreme Court of Canada adopted a method of reconciling Dominion and Provincial powers which would have made for a very strong federal government. However, the trend of the rulings of the Privy Council changed this method. The Privy Council emphasized the federal character of constitutional arrangements and refused to uphold the constitutionality of Dominion legislation merely because it was for the general advantage of Canada or to treat Provincial governments as mere local government authorities. The result was a strict limitation of the authority of the Dominion Government and this was further emphasized by the interpretation, during the last decade, of the treaty-making power. The power to tax and the power to make grants are of significance in Canada also; but their influence is not considerable, especially in relation to the major provinces. The Dominion Government has also authority in respect of the "regulation of Trade and Commerce." The interpretation of this power has been largely affected by the classes of subjects mentioned as exclusive Provincial Subjects and also by the general Provincial power over matters of local nature. The result has been that the Dominion Government has found itself much less powerful than the Federal Government of the U. S. A., and the attempt to copy the New Deal in Canada failed because of the intervention of the Courts.

SCOPE IN INDIAN UNION

In these three federations an extension of powers of the federal government by judicial interpretation took place wherever the constitutional power was wide and related to a broad aspect of

economic life. The power to tax and to spend which had been widely defined everywhere was not curtailed materially even by interpretation of the Privy Council in respect of the Canadian Government. The power over interstate commerce or over industrial relations covered such essential features of modern economic life that through them a large field and a variety of aspects of it could be influenced. In the Indian Union the taxation and spending power is likely to be strictly limited, and there would be nothing corresponding to the Commerce power. The power over communications is not likely to prove as helpful, because communications, though important, are not so integrally related to the organization of economic life as commerce and industrial relations. The Defence power is the only power to whose extension by judicial interpretation we might look forward in the Indian Union. The important issue here will be whether activities for preparing for defence in war or for maintaining readiness for war are held to cover a narrow field in peace time. A very liberal interpretation of this power may enable the government of the Indian Union to control normally a considerable field of, especially, productive activity even in times of peace.

The course of judicial interpretation is itself conditioned by facts relating to political life and sentiment in a country. Among nationalities in the British Dominions, Australia stands first, judged by cohesion and unity. The notable homogeneity of its population and the absence of bilingualism or any other sharp cultural cleavage marks it out from, for example, Canada. The difference in the growth of the power of the federal government in these two Dominions must be taken to be a reflection, at least in part, of these fundamental political conditions. The Canadian-French element exercises a continuous force in favour of maintaining Provincial powers intact. It may be apprehended that the Muslim majority provinces might play a similar role in the Indian Union. Even apart from this, the differences in geographic and economic circumstances and in language and culture between the different units would be so far larger in India than in most other federations that the climate of public opinion might not be favourable to extensions of federal powers by judicial interpretation. This would be so at least in the early decades. The composition of the Supreme Tribunal, which, as shown in the U. S. A., is sometimes an important consideration, might also make for the same result in India.

COMMUNAL MAJORITIES

In this connexion attention must be drawn to another feature of the proposals of the Cabinet Delegation. It is laid down that "any question raising a major communal issue in the (Union) Legislature should require for its decision a majority of the representatives present and voting of each of the two major communities as well as a majority of all the members present and voting." This introduces for the first time in Indian constitutional arrangements the requirement of a majority of a section of the legislature and the concept of "major communal issue." In the past there have been conventions in India and elsewhere by which certain subjects such as the personal law relating to specific communities, have been dealt with only with the consent and full support of those communities. Or, for want of local autonomy, practices have been established such as those relating to purely Scottish affairs in the British Parliament. However, there had nowhere yet appeared a prescription of majorities of sections of the legislature. This device separates, for certain purposes, the legislature of the Indian Union permanently into three sections: (i) Hindus,¹⁶ (ii) Muslims, and (iii) others. On a major communal issue, members of section (i) and (ii) will vote twice and of section (iii) once. The division is based not on political affiliation but on community, and it is an arrangement of which the only effect could be to perpetuate a close connexion between political and communal divisions. This is as near to identifying community with nationality as might be expected.

MAJOR COMMUNAL ISSUE

Even more objectionable than the device of the double majority is the vague phrase "major communal issue." Hitherto it has been usual to protect specific rights of minority communities, such as the denominational schools in the Canadian constitution, or a variety of other rights as under the system of the protection of minority rights devised by the League of Nations. The protected right has, however, been usually so defined that its content could be properly determined in a court of law. The phrase "major communal issue" leaves the field extremely indeterminate. It makes the scope for

¹⁶ Perhaps a strict interpretation would indicate that not "Hindus" but the term "General" represents one of the two major communities. In this case only Sikhs would comprise "others."

controversy and judicial interpretation as wide as can be imagined. Almost every aspect of every subject dealt with by the Union could be brought under this head. All questions relating to services and personnel would obviously fall under its scope. It should also not prove difficult to read or to introduce a communal question into any issue of policy. All proposals of legislation could by appropriate amendments be given a communal turn. Therefore, unless the relations between the two major communities are completely harmonious, the work of the federal legislatures would be considerably hampered and the strength of the federal executive greatly reduced by the introduction of this conception and this voting arrangement in the Indian constitution.

Another important feature of the proposed arrangements is liable to make the position of the Union government weak and to make political life unsettled. This is the provision which would enable any province to call for a reconsideration of the terms of the constitution after an initial period of ten years and at ten yearly intervals thereafter. Such a provision would most probably rule out any progress during the first ten-year period. It might lead parties or provinces to work deliberately for certain ends during the whole of this ten-year period. If, for example, the goal of an independent Pakistan is continuously kept in view by the Muslim League in the Muslim provinces, there would naturally be a definite attempt to build up a case for partition or independence at the end of the ten-year period and to take steps now already so as to attain that end at that time. A provision for definitely reopening fundamental issues at a stated point of time would make for general disturbance in the working of the constitution through the intervening period. It is in some respects worse than a general right of secession being exercised at any time. In a forced or an unwilling Union, with one party definitely pledged to break it, a provision of this type is a guarantee of continuous trouble.

CONCLUSION

A study of the evolution of federal powers in other federations suggests that there would be little scope in the powers of the Indian Union for the inception and progress of a movement towards their expansion through judicial interpretation. Certain essential features of the proposed constitutional arrangements might also make for the government of the Union being divided and weak. It does not,

therefore, seem likely that the Union, for at least the first decade, would either be vigorous or would exercise powers wider than those indicated by a strict interpretation of the subjects allotted to it.

IV. FUNCTION OF GROUPS

According to the proposals of the Cabinet Delegation, Provinces should be free to form Groups with Executives and Legislatures. The initial Groups indicated are those of (i) the Panjab, the North-West Frontier Province and Sind (ii) Bengal and Assam and (iii) the rest of the Provinces. The idea of the formation of groups has been severely criticised chiefly on the ground that it creates divisions based on communal considerations in the constitution of the country. This criticism is undoubtedly valid. However, it is an integral part of the compromise made, in order to obtain an Indian Union, that the Provinces with Muslim majorities should be enabled to form separate administrative units by themselves. A sub-federation within a federation certainly creates unnecessary complications, but the sub-federation seems to be necessary in order to prevent the break up of the country into two independent federations. If the Muslim League could in any way be convinced of the undesirability of forming a sub-federation and of the need for a strong centre for the Indian Union, the formation of Groups could be avoided. If this cannot be done, and nothing in the present situation indicates that it can be done, the formation of Groups, its propriety and their functions must be considered seriously.

PROBABILITIES IN GROUP FORMATION

The question may be considered in the light of a number of alternative possibilities. The first is of the Muslim League agreeing to give up the Group idea and to form a strong Centre. In this event the need for Groups will automatically vanish. Secondly, there is the possibility that no Group can in actual fact be formed because of either legal or political conditions. It has been stated by a number of lawyers that the provisions in the proposals of the Cabinet Delegation regarding the formation of Group constitutions are somewhat obscurely worded. Evidently they are capable of being interpreted differently. One view of the matter is that before any Section of the Constituent Assembly can proceed to consider the constitution of a Group, the existing Provincial Legislatures of

all the Provinces in the Section must vote in favour of joining the Group, and that if even a single Province in any particular Section refuses to join the Group, no Group can be formed in that Section. If this interpretation of the provisions is accepted, Groups would most probably not be formed in any area. It is unlikely that Assam would vote for joining Group C, and it might happen that the existing North-Western Frontier Province Legislature might also vote against the formation of Group government for Section B. The other interpretation of the provisions included in the proposals of the Cabinet Delegation is that the formation of the Group government depends entirely on the vote of the majority of members included in a Section of the Constituent Assembly. The choice provided is not in the initial stage to the existing Provincial Legislatures, but only of opting out of the Group to the legislatures elected according to the new constitution. Even with this interpretation it is likely that political difficulties might intervene in the successful formation of Group constitutions. It is likely that the new legislature for Assam, however constituted, would contain a majority of those opposed to the formation of a Group with Bengal. In respect of Section B, also, political difficulties may arise making the formation of a Group difficult. The Panjab is overwhelmingly important in this group, and the other two Provinces in the Group, namely, Sind and N. W. F. Province, may require very considerable weightage for themselves in the Group constitution before they agree to transfer large powers to the Group government. A failure to reach agreement on this important question may result in Provinces of Group B also not having a Group government. It is not, however, improbable that these difficulties would be overcome and a Group government formed for Group B.

GROUP A AND UNION POWERS

We must consider the question of the formation of Group governments apart from the desirability or otherwise of having a sub-federation or forming a Group on communal lines. Given those unavoidable facts of the political situation, what step is it desirable for the Provinces of Group A to take? It has been suggested that Provinces in Group A should refuse to form a Group government and this step has been advocated in order to register disapproval of the Group idea and to prevent the perpetuation of separatist feelings. It is difficult to see how such a purely ideological protest is going to help in the solution of our political problems. A negative attitude

can only lead to the creation of highly chaotic conditions in the country, and a refusal to form a Group government in Section A would mean that the constituent units of this Section, the Provinces and the States, would find themselves vested with all powers other than those given to the Union. There is no reason to suppose that a mere refusal to form a Group government on the part of Provinces in Group A would result in increasing the powers of the Union Government. It is, of course, not known what provisions for constitutional amendments will be included in the constitution of the Indian Union. Whatever they may be, amendment will require substantial agreement among the Provinces, and as far as can be seen it will not be possible to change the constitution or increase the powers of the Union without the agreement of the Muslim Provinces. The decisions of the Provinces in Group A not to form a Group government could not, however, in any way influence the views of the Muslim Provinces relating to the strength of the Centre. If it is found possible to form a Group government in Group B, the Provinces of that group will, for ever, strongly oppose any increase in the powers of the Union government. The non-formation of Group C is not likely to affect the issue, as Bengal is a Province large enough and with enough of a feeling of separate identity to want to continue to exercise the vast powers of the Provincial government in the Indian Union. Even if a Group government is not formed for Group B the provinces of Sind and the Panjab might still desire to keep down the powers of the Centre. It is, in any event, highly unlikely that in an Indian Union formed according to the structure prepared by the Cabinet Delegation, the Muslim Provinces would agree, during the first ten years, to any extension of the powers of the Union. Therefore, ordinarily, it will be impossible to extend those powers whether a Group government is or is not formed in either of the Sections. Certainly the non-formation of Group government in Group A is not likely to affect the issue at all.

RESULTS OF ABSENCE OF GROUP GOVERNMENTS

In the absence of the formation of a Group government, the Provinces will become the real units of all peace-time administration and planning. The effect of this may be briefly indicated. The various Provincial units are today very uneven in strength and resources. If the development of the Provinces is left to depend only on the individual strength of each, the Provinces which are

poor or whose resources are undeveloped will find great difficulty in making progress. Even the richer Provinces will find themselves handicapped because of the planning effort being confined to a single Province. There will be a great wastage of potential wealth everywhere, and whatever progress is achieved will be very unevenly spread. Even apart from planning for future development, the working of ordinary administration may encounter grave obstacles in the absence of a Group government. The working of food administration during the time of war has been found difficult enough, even with a comparatively strong Central Government, because of the intransigence of Provincial Governments. With complete Provincial autonomy, it would be difficult in the future to prevent gross inequality in food distribution, and even periodic breakdowns. If the term "Balkanization" has any meaning, there will be real "Balkanization" of the country if the Union remains vested only with the three subjects and all residual power passes to the Provinces and States with no intermediate Group government to co-ordinate efforts over larger areas.

It has already been pointed out that the government of the Indian Union will most probably not possess any powers for making grants to Provincial governments. This will result in the poor provinces being permanently thrown entirely on their own resources. Obviously they will not only not achieve progress in the circumstances, but may even find it difficult to carry on. In a similar manner, such help as by conduct of research and the collaboration of federal agencies with governments of the States, as is given, for example, by the U. S. Department of Agriculture to the various States, would also be found impossible.

DELEGATION OF POWERS BY PROVINCES

It has been suggested that even if no Group government is formed for Group A, the difficulties indicated above might be overcome by Provinces in Group A delegating considerable powers to the Central government. The difficulties of such partial delegation are obviously very great. In the first instance, federal constitutions do not usually contain provisions enabling individual constituent units to delegate powers to the federal government, and it is not clear whether the Muslim Provinces would not object to such power of delegation being included in the constitution of the Indian Union.

For they might suspect this to be an indirect way of expanding Central powers. However, even if this difficulty were to be overcome, there are a great many objections to having resort to delegation, except for minor specific or local purposes. Some of these difficulties have been indicated by the Cabinet Delegation in their statement.

CONSTITUTIONAL PROBLEMS ARISING OUT OF DELEGATION

It has sometimes been suggested that the method of delegation might give flexibility to federal governments and such delegation would result in bringing about the special adjustment to local circumstances that might be found necessary in a large federation. This view was, for example, taken by the Rowell-Sirois Commission in Canada. Delegation in this case becomes a supplementary device and an instrument of adjustment. Such delegation may not prove difficult to work and may even be useful. But the use of delegation advocated for the Provinces of Group A is of a totally different character. In this instance delegation is to be used to change radically the character of the Central government despite the opposition of particular provinces. Economic planning, for example, might be one of the subjects delegated, and this would involve considerable control by the Union over Provincial resources, over agriculture, manufactures, industry, etc. What authority in the Union would exercise these powers? Would the legislature of the Union as a whole and the executive of the Union as a whole be competent to deal with the subjects delegated only by Provinces of Group A? The size of the Union cabinet may easily have to be doubled because of such special delegation by the Provinces of Group A. In normal peace-time administration, the delegated powers would in all probability be vastly more important and the problems relating to them much more complex than those of Union subjects proper. If the Union legislature and executive as a whole are to deal with this very considerable sphere, power over the fortunes of the people in Group A would be exercised by representatives from Provinces which would not have delegated power in these vital subjects to the Union. This is an arrangement which it is highly unlikely could be approved of permanently by Provinces of Group A. It is also unlikely that under this arrangement the work of the Union legislature or the executive would be conducted with the same sense of discretion and responsibility as it would be if the constituencies of all those participating in government

were affected equally by the decisions taken. Considerable difficulties are also bound to arise in regard to the financing of this extra delegated section of the Union government. The problem of appropriation between different heads and proper accounting among the general and the delegated subjects would prove impossible of solution. The sources of revenue for the expenditure in connection with delegated subjects would have to be kept strictly apart from the sources of revenue of the Union in general and all accounts and personnel would have to be distinct. Even so, some mixing up of overheads might be inevitable, and considerable friction and wastage is likely to arise on this account.

It has been suggested that power relating to delegated subjects would be exercised not by the whole of the legislature and executive but only by those members who come from the Provinces which have delegated the powers. The constitutional difficulties in working such an arrangement would be immense. The principle of cabinet responsibility would have to be discarded in this event and there would, in effect, be a break-up of the legislature and the executive into two sections. The resulting problems would be innumerable and complex. Also, if it is the intention to confine the actual power over delegated subjects to the representatives of Provinces who make the delegation, it is difficult to see what objection there would be in openly forming a special Group government for these Provinces. A separate Group government would have the merit of not introducing any new problems in the sphere of Union government and not complicating a situation which must even otherwise remain delicate especially in the initial years. A Group government would be autonomous, could act independently and vigorously and it would be free from the results of being mixed up with the politics of the Union. It is difficult to take seriously the contention that there would be any considerable degree of difference made to the creation of sentiments or in public reactions by the special delegation of powers by the Provinces of Group A rather than by the formation of a Group government.

DIFFICULTIES IN MAKING DELEGATION EFFECTIVE

Apart from these objections, it will in practice be found very difficult to work the device of delegation for increasing Union powers in Group A. The delegation of powers by the Provinces is not a step that could be taken immediately either by the Constituent

Assembly or by the existing legislatures. All that the Constituent Assembly could do would be to provide in the constitution for the delegation of powers by Provinces. The actual delegation of powers could take place only after the new Provincial legislatures are formed. In this event, it is not certain that all the Provinces even in Group A would necessarily delegate the powers either fully enough or in a manner uniform enough, for action by the Union to be effective. The recent experience of the delegation experiment in Australia should serve as a warning in this regard. In Australia, in 1942, all State Governments represented at a special constitutional convention by their premiers and leaders of opposition, unanimously agreed that certain additional powers were required by the Commonwealth. To avoid a referendum, necessary for an amendment of the constitution during war, it was decided that state legislatures should confer the additional powers upon parliament under section 51 of the constitution. A draft bill was also agreed upon to give effect to the arrangement. When the bill came before the legislatures of the various States, only two passed it in the original form. Two passed bills which granted powers less than those agreed upon; one passed the bill but imposed the condition that it should not operate unless the other five States had previously passed bills in substantially the same form as the draft bill; one State shelved the bill. This happened in a matter on which there was complete previous agreement among leading politicians and at a time when, because of war, political sentiment was almost unanimously in favour of the increasing of Commonwealth powers.

ADMINISTRATIVE DIFFICULTIES

In view of such experience, it is difficult to believe that the method of delegation would be found effective in curtailing Provincial powers and in bringing into existence governmental machinery which would be really competent to co-ordinate and control activities over large areas. For a proper working of delegation even for Provinces of Group A the delegation must be made by every single unit as well as uniformly in the same terms. Any deviation from this would make the whole procedure fruitless. The boundaries of Groups A, B and C should have been so drawn that the three Groups form externally compact areas, i. e., having a continuous frontier unbroken by intrusion of the territory of any other authority. In case delegation of powers is not made by even a single Province within a Group, then the compactness of the

Group regime would be broken and the difficulties of administration of any policies of planning, etc., would become immense. In the same way, if delegation is not uniform it would be impossible to formulate uniform policies or plans and uniform legislation over the whole area.

Similar difficulties are not likely to arise in the formation of a Group government by the Constituent Assembly, because the details of the subjects given over to the Group will be determined by the Constituent Assembly itself. The new Provincial legislatures will have power only to opt out of Groups but not to modify, unilaterally, the Group constitution or Group subjects. Opting out by any Province of Group A need not be considered as an immediate or real danger.

The method of delegation is cumbersome, and it will inevitably introduce grave complications in the working of the Union government. It is also very uncertain whether effective delegation could actually come about. To deny the formation of a Group government at this stage is to run a major political risk with possible disastrous consequences for the future; all this in the cause of an ideological protest or as a gesture which in present circumstances is obviously going to be ineffective, seems neither desirable nor justifiable.

VOLUNTARY CO-OPERATION

Apart from the delegation of powers, the only manner in which greater co-operation might be brought about amongst Provincial governments is by voluntary agreements. A variety of forms of voluntary agreements have appeared in other federations during the last few decades. In the U. S. A., for example, interstate compacts have been made and joint authorities have been set up for specific purposes. There has also been a movement towards the adoption of uniformity of State laws, the results of which have been, on the whole, rather disappointing so far. In addition there has taken place a certain amount of administrative co-operation between the States, and Commissions on Interstate Co-operation have been set up by various States since 1935. The total result of all these efforts has not been impressive though the movement as a whole has been called by the term "new federalism." Interstate compacts have been difficult of negotiation and, when formed, have not always been ratified by State legislatures. The extent of co-operation between

States and the co-ordination of effort has been impressive chiefly when it has been brought about by federal authority either by the method of grant-in-aid or by the use of State officials as agents of federal government or by federal research and collaboration of work with state agencies.¹⁷

Another voluntary device to which attention may be drawn is the informal method of the Premiers' Conference in Australia. It has been said that during the years of economic crisis in Australia between 1930 and 1934 the Premiers' Conference was more important and more effective than any single government was or could have been. One of the reasons for the effectiveness of the Premiers' Conference in Australia, it has however been pointed out, is its close connection with the Loan Council.¹⁸ This Loan Council has been created out of the provisions of the constitution for the distribution of surpluses of the Commonwealth government, and is a joint body of Commonwealth and State representatives dealing mainly with the problems of the indebtedness of the State and the Commonwealth, and the grant-in-aid to States. Thus what appears to be largely an informal and voluntary device is seen to be effective because of its connection with an important constitutional arrangement. As it is impossible to contemplate the creation of bodies corresponding to the Australian Loan Council in the Indian Union, the possibility of voluntary co-operation by this method may be ruled out.

CENTRAL PARTY

Another alternative to a superior governmental organisation bringing about co-ordination of Provincial activities may be an extra-constitutional body like the Communist Party in the U. S. S. R. It should, however, be noted that the powers actually possessed by the Central government in the U. S. S. R. are very much larger than those of any federal government and the Communist Party wields these powers to a considerable extent. Again, an extremely well-knit organisation and a determined and ruthless leadership fired by a single ideology are necessary to work such an extra-constitutional device. These are obviously absent in India.

¹⁷ Inter-Governmental Relations in the U. S., *Annals of the American Academy of Political and Social Science*, 1940.

¹⁸ K. C. Wheare, *Federal Government* (1946), p. 242.

INCREASE OF POWERS BY CONSTITUTIONAL AMENDMENT

The long term consequences that are likely to flow from leaving Provincial powers uncurtailed at the time of the initial formation of the constitution, may be emphasized. The history of all federations shows how difficult it is to enlarge, by constitutional amendments, the powers of a Central government once the degree of authority of the constitutional units has been defined. In Australia, every time an extension has been sought, by a referendum, of the constitutional powers of the Commonwealth, the referendum has registered an adverse vote. An attempt was made at the end of the war of 1914-18 to enlarge the powers of the Commonwealth. This attempt failed even after the necessity for it had been generally accepted by political leaders of all parties. Even more remarkable was the result of the referendum taken in 1944. This was the sequel to the attempt at delegation of powers by the States referred to above. The Commonwealth government attempted to obtain powers denied to them by State legislatures by referendum and constitutional amendments. However, in spite of the overwhelming support of all leaders of political parties, the measure was rejected in the referendum. Whether, therefore, through a vote of the State legislatures or through a vote of the electorate at large, the process of increase of powers of the federal government, once the constitution has been formed, is an extremely difficult process. Sentiment at the time of the formation of the constitution may be suitably worked up and if, as in India, the formation of the constitution rests with only an Assembly and is not subject to a referendum, it would be possible to look well in advance and to make the Groups strong. Once, however, this opportunity is lost and powers become vested in the Provincial legislatures and by implication in the Provincial voters, it would be very difficult to subtract from them even over a long series of years. The best way, of course, would be to create a strong Centre immediately. In the absence of this, the formation of a strong Group government is the only possible step. If the government of Group A can prove the advantages of co-operation, the ultimate objective of a stronger Union might be attained. In the absence of such an intermediate experiment, India might be permanently condemned to a weak Centre and a large number of almost entirely autonomous units spread all over the country.

FUNCTION AND IMPORTANCE OF GROUP A

It is not necessary that the arrangements especially relating to

economic planning, etc., made by the government of Group A should be confined strictly or for all time only to Group A. It should be possible to provide in these arrangements for voluntary adhesion or accession by Provinces outside the Group. If such arrangements work, the sphere of influence of organisations set up primarily by Group A would widen slowly and might result ultimately in persuading the requisite majority of Provinces to extend the powers of the Union government. In this event the Groups, i. e., all the Provinces, could transfer the requisite powers to the Union. However, the vital condition precedent to this process is the coming into existence of at least one Group organisation. The concrete advantages of planning over large areas, and of the pooling of resources in men and money, must be demonstrated before public opinion in other areas is convinced of the need of the transfer of such powers to a Central government. It would not be possible to do any of these things if no government was formed for Group A. The Provinces would then become absolute, and once Provinces have wielded these large powers for any length of time, it would be impossible to think of the formation of a strong Central government.

CONCLUSION

Given the powers and strength of the Government of the proposed Indian Union, the device of an intermediate Group government not only follows in logical sequence but is a vital necessity. The regime of three Group governments is vastly preferable to that of thirty or more autonomous units. Group governments, even in Groups other than A, would operate over comparatively large areas and would command adequate resources for planning economic development. In their absence not only planning but also ordinary day-to-day administration is likely to suffer. The minimum necessary co-ordination of the activities of the Provinces and Indian States cannot also be brought about by any alternative method as that of delegation. The formation of a government for Group A is specially important and urgent. On the one hand, disorder in the area of this Group, which is vast in extent and which has numerous constituent units, is likely to be the greatest for lack of a co-ordinating agency; and on the other, the success of the government of Group A is the most likely means of bringing about a change of sentiment relating to the powers of the Union.

V. GRADATIONS IN THE STATUS OF INDIAN STATES

BRITISH CROWN, PROVINCES AND INDIAN STATES

The problem of the Indian States has been dealt with only cursorily by the Cabinet Delegation. Regarding the relation of British India with the Indian States, the Delegation laid down that "with the attainment of Independence by British India, whether inside or outside the British Commonwealth, the relationship which has hitherto existed between the Rulers of the States and the British Crown will no longer be possible. Paramountcy can neither be retained by the British Crown nor transferred to the new Government." This would mean that the moment British India became independent, the Indian States would also attain the same status. The memorandum on the future position of the Indian States on May 22, 1946, published by the Cabinet Delegation, supports this interpretation. It lays down that "all the rights of the Indian States which flow from their relationship to the Crown will no longer exist, and all the rights surrendered by the States to the Paramount Power will return to the States. Political arrangements between the States on the one side and the British Crown and British India on the other will thus be brought to an end. The void will be filled either by the States entering into a federal relationship with the Successor Government or Governments in British India or, failing this, entering into particular arrangements with it or them."

This makes it clear that in the opinion of the Mission the termination of the relations of the Indian States with the Crown will also mean the termination of all relations of the Indian States with British India and that this will create a void. For any state or political unit a "void" or the absence of any relation of alliance, subordination, etc., to any other political power or unit is tantamount to the attainment of the status of political sovereignty. And the last sentence in the quotation above would suggest that each individual state would then be free to enter into federal relationship with the successor government in British India or to enter into any other particular arrangement with it.

PROVISIONS IN MISSION STATEMENT

One of the basic points in the statement of the Delegation is that "there should be a Union of India embracing both British

India and the States." The two classes of units in the Union have, however, not the same freedom of political action. Membership of the Union is taken for granted on the part of the Provinces; the Indian States have the fullest liberty to keep out and to have any relation other than the federal relation with the proposed Union. In consequence there are detailed provisions regarding the representation of Provinces in the Constituent Assembly and regarding their grouping. The Indian States are not mentioned in connection with Groups and the measure of their representation is indicated only by a maximum figure. The exact number of the representatives of Indian States would depend on the number of Indian States which decide to participate in the work of the Constituent Assembly and their distribution would be determined by a negotiating Committee to be appointed in their behalf.

Two other questions in relation to the position of the Indian States arise out of the formulation of the "six major points." Firstly, it is stated that "the States will retain all subjects and powers other than those ceded to the Union." This puts the Indian States as a whole and each individual Indian State on a par with the Provinces of British India. Each Indian State becomes under this provision a federating unit with a status equal to that of a Province and enjoying all powers other than those specifically ceded to the Union. There is also a difference made in the formulation of the positions of the Indian States and Provinces. In defining the powers of the Provinces specific mention is made of "residuary" powers. The term is not used in the description of the powers of the Indian States. No special significance, however, need be attached to the variation.

It is much more important that the Indian States are not at all mentioned in connection with the formation of Groups. Provinces, it is said, should be free to form Groups. Does the omission signify anything in particular? Does it mean that the Indian States would not by themselves be able to form Groups and not be able to join the Groups formed by the Provinces? Or is it that the Cabinet Delegation felt that the Indian States were already autonomous in such a large measure that it would be improper to lay down any directions for action by them, positive or negative, barring the obligation to cede certain subjects on joining the Union? The last seems to be the most likely interpretation, because other parts of the statement of the Cabinet Delegation visualise the possibility of a variety of different arrangements regarding the status and power of

individual Indian States. Paragraph 14 of the statement has the following: "The States are ready and willing to co-operate in the new development of India. The precise form which their co-operation will take must be a matter for negotiation during the building up of the new constitutional structure and it by no means follows that it will be identical for all the States." The suggestion that the position of all Indian States in the new constitutional structure may not be identical is important. The assumption that the Delegation contemplated varying constitutional positions for different Indian States is further strengthened by what occurs in the Delegation's memorandum on the Indian States to which reference has already been made. This memorandum emphasizes the necessity for the States "doing everything possible to ensure that their administrations conform to the highest standard." It goes on to say that "where adequate standards cannot be achieved within existing resources of the States, they will no doubt arrange in suitable cases to form or join administrative units large enough to enable them to be fitted into the constitutional structure." That this view of the matter is accepted by the Indian States themselves is shown by the report that among matters on which the negotiating committee of the Indian States will seek clarification are included such issues as the size of the federal units and the question whether they should group at a provincial group or union level.

VARIATIONS IN THE STATUS OF INDIAN STATES: STAGES AND RANGE

This leads to a consideration of the variety of possible ways in which the Indian States can be associated with the Indian Union in the constitutional structure of the future. Starting from the highest level, one may enquire whether it will be possible for the Indian States to form a federation amongst themselves which would join with the federation of the Indian Provinces to form a Union. No attempt at forming such a federation of all the Indian States is likely to be made. The Indian States are so far flung, so disparate in size and strength, with such diverse problems, so cut up everywhere by intervening British territory that the formation of a federation of all the States in India may be considered an impossibility. In the future constitution it is not the Indian States as a group that will come into the Union; it will rather be individual Indian States or groups formed of contiguous individual Indian States that would function as the federating units.

Next, it may be asked whether the Indian States in the Union will be on a parity of status with the Groups or with the Provinces. The issue may rather be raised in a somewhat different manner. According to the proposals of the Cabinet Delegation the Provinces and the Indian States are the original federal units, and it is the Provinces and the Indian States that enjoy all powers other than those ceded to the Union. The Provinces may, however, take specific subjects in common with other Provinces and thus form larger units or Groups of political authority. Will the Indian States be expected to join in the formation of Groups? Or will they be expected to join only at the Union level, individually or jointly? As has been pointed out, there is no mention in the Delegation's proposals of Indian States becoming component parts of Groups. The formation of Groups would, however, serve little purpose if Indian States were not expected to join them. The difficulties faced by the government of Group A would be specially large if the Indian States included within its area kept out as a whole. The absence of a mention of the Indian States in connection with Groups need not, therefore, be interpreted as preventing their joining the Groups. The Indian States are indeed given a much greater latitude of behaviour than the Provinces. They can, if they like, keep out of the initial formation of Groups, but the Provinces cannot do this. The Provinces can only opt out of a Group already formed; the Indian States would be able to exercise their choice at the time of formation of the Groups themselves. An individual Indian State not electing to join a Group would retain, without any diminution, all the powers of the federating unit and would have only a federal relation direct with the Union. Presumably, this would also be the position of a Province which had successfully opted out of a Group.

While, on the one hand, the Delegation's proposals permit any individual Indian State to maintain without curtailment the full status of a federating unit, the memorandum of the Delegation visualises that some of them may find it necessary to lose their separate political existence by forming administrative units with others or by joining other administrative units. If the term forming administrative units with others is taken to cover the case of a complete merger with that unit, the range of the possible political status, in future, of individual Indian States will be very large. It will extend from complete merger with a neighbouring unit to the full status of a federating unit without the cession of any powers to a Group government.

The Cabinet Delegation has suggested that the position of all the Indian States in the new constitutional structure may not be identical and has also given some indication of the range of possible variation. The main problem is to define clearly a series of graded positions and to discover some principles by the application of which an orderly distribution of the individual Indian States among the different grades is achieved. The negotiations with the Indian States will be protracted and their results unsatisfactory unless such objective criteria are found.

An important criterion which the Delegation itself has stressed is that of the maintenance of the highest administrative standards. A unit of political government which could not maintain adequate administrative standards is not a unit that could be allowed to survive. In this connection reference may be made to the important step of the attachment of small units to larger Indian States taken by His Excellency the Crown Representative with the concurrence of the Secretary of State for India in 1943 and confirmed by Parliamentary legislation in the next year. The *communiqué* issued by His Excellency the Crown Representative in announcing this step as well as the speeches made in Parliament by members of the British Cabinet in support of the bill contain important statements of principle which should prove very useful in connection with the problem in hand. In deciding upon the attachment of these small Indian States to larger units the British Government acted under pressure of two urgent needs: (i) remedying the administrative deficiencies of the small Indian States and (ii) facilitating their inclusion in any federal administration applicable to India as a whole. A number of possibilities were contemplated before the final solution was adopted. In the first instance, it was considered whether it would be possible to federate these smaller units into large units. Secondly, it was also considered whether they could be consolidated into British India. It was found that in relation to the particular Indian States chiefly under consideration, that is, those in Kathiawar and Gujerat, neither of these two possibilities could be given effect to. The federation of smaller units into large units could not be made because the small Indian States were not all contiguous and the larger federated units would not thus have been compact blocks of territories. A consolidation into British India was not possible because none of these Indian States lay along the boundaries of any British Indian districts in which they could be incorporated. The actual step taken, therefore,

was to attach them to neighbouring larger Indian States. In determining the particular large Indian State to which any one of these smaller Indian States should be attached, the main consideration was geographical.¹⁹

PRINCIPLES ESTABLISHED

The actual step taken by the British Government of attaching these smaller Indian States to larger Indian States, as well as the other steps such as forming larger units by federating, or consolidating the states with British Indian districts, which, according to official declaration, were contemplated as possible or desirable and were not adopted only because of practical difficulties, all provide very useful precedents and directives regarding the future arrangements for Indian States. In replying to the charge that the step taken by him lowered the status and infringed the rights of many ancient families, the Crown Representative categorically enunciated the principles "that autocratic powers should not be abused and nothing which is not inherently capable of survival should be artificially perpetuated" and "the ultimate test of fitness for the survival of any State was," in the opinion of the Crown Representative, "the capacity to secure the welfare of its subjects."²⁰

It should not be difficult to evolve an orderly scheme for the constitutional position of Indian States in the light of these statements of principles and these actions. The ultimate tests are the capacity to secure the welfare of subjects and the maintenance of the highest standards of administration. Nothing that is not capable of survival in the light of these tests should be artificially perpetuated; and the solution of each problem should be obtained according to the dictates of practical convenience, the main consideration being geographical, in any of a variety of ways—consolidation or attachment or union either with similar or larger Indian States or with an Indian Province.

TWO TYPES OF ADMINISTRATIVE UNITS

In applying the test of proper standards of administration, two levels or stages of sphere and performance must be taken into

¹⁹ See Speech of the Attorney-General, Sir Donald Somerwell, at the time of introducing the Second Reading of the India (Attachment of States) Bill, House of Commons, 1st March, 1944.

²⁰ *Indian Information*, May 1, 1943, Vol. 12, No. 114, p. 389.

consideration. At the lower stage, there is the unit of efficient administration which is appropriate only when all the higher services and requirements are supplied from above or outside. The other or higher administrative unit is the unit that is capable of being almost self-sufficient and is able to provide internally for all that is required of the federating unit in an Indian Union. The federating unit among the Indian States must be only such larger units whose internal resources are large, and these units alone could be compared with Indian Provinces. The smaller unit as defined above can carry on and function as a separate political entity, not as a completely autonomous federating unit but only as a sub-unit in a federating unit.

It would lead to too drastic a set of proposals to contemplate the survival of only such Indian States as could properly function as independent federal units by themselves. For in this case the number of the surviving Indian States may not exceed five. It is, therefore, necessary to consider the possibility of the survival of Indian States which are large enough and compact enough to be independent administrative units, and which, if fitted into a large federating unit, could still function without proving a great hindrance to the welfare and progress of their subjects.

THE SMALLER UNIT: ANALOGY OF A DISTRICT

From the early days of British Rule in India, the administrative unit of the district has been treated as an independent charge for most purposes. To this day the district in all the Indian Provinces is a comparatively autonomous unit. Most services are organised on the basis of a district and most decisions, barring major decisions of policy, taken at the district level. The districts, apart from the specialised services, are comparatively self-contained. Therefore, a unit of administration having the size and resources comparable to an average district may be considered large enough for continued survival.

The size of districts in India differs considerably from province to province. In terms of population, a majority of districts have a population of more than 10 lakhs. A large number of districts have a population of between 6 and 10 lakhs. Only in districts which are tribal areas or frontier tracts or comprise a vast expanse of mountainous country is the population very much smaller than 5 lakhs. Less than five districts in the whole of India other than

those which are frontier, tribal or mountainous districts, have a population of less than 5 lakhs. The population of the average district is not less than 10 lakhs; and it is exceptional for a district to have a population as low as 6 lakhs. It may be argued that Indian States, as a whole, cover territory which in relation to the territory of British India is sparsely populated. Ten lakhs may, therefore, be rather a high minimum for Indian States areas. But even for the areas covered by Indian States a limit of a population of 6 lakhs as indicating the minimum unit of efficient administration would not appear to be unfair.

What actual limit of minimum size for survival as a separate political unit will at any time be adopted is, of course, a matter for negotiation. The actual result is bound to contain an element of compromise. A minimum limit may be indicated here, making full allowance for the plea for the survival of as large a number of Indian State units as possible. The furthest possible concession would be to define the population of a single compact unit at half of the limit indicated above, say, at 3 lakhs. If this limit of population in 1941 is adopted as the test, the list of surviving Indian States yielded by its application is almost identical with the list of Indian States who are given an independent seat in the Federal Assembly under the Government of India Act, 1935.²¹

STATUS OF SMALLER UNITS

A political unit which has a population of only a half or a quarter of an average district in British India could be retained as a separate political unit only at a status much lower than that of the federating unit. For the others, which do not satisfy even this minimum test, the only possible course is attachment to or absorption in a larger contiguous unit. Any of the three possibilities contemplated at the time of attachment of the Western Indian States may, according to circumstances, be adopted in the case of these smallest Indian States. These are (i) forming a large unit out of contiguous Indian States (ii) consolidation into British India and (iii) attachment to a neighbouring larger Indian State. In such regions as Rajputana, Central India, Kathiawar, Chattisgarh and the Eastern Agency, a large number of the small Indian States

²¹ Schedule I, Table of Seats of Representatives of Indian States.

are contiguous to other Indian States, large or small. In other regions where the small Indian States are not flanked by other Indian States, consolidation with British India is the best way out. For the formation of the larger units or for attachment, contiguity is not to be interpreted as merely the touching of frontiers so that a joining together forms a sprawling and an indented unit covering a large area in a dispersed manner. It is necessary that the new unit formed is compact and can be effectively organised for all ordinary administrative and welfare purposes in the same manner as an average district.

TERRITORIAL INTEGRITY OF INDIAN STATES

The discussion has proceeded so far in relation only to objective tests of administrative efficiency. In order to carry it further, it is necessary to consider problems of constitutional status. We have seen that from the point of view of the welfare of subjects, it is highly desirable that certain Indian States be attached to or merged into larger neighbouring units, and that others should become sub-units of new composite federating units. Some of the existing Indian States would thus cease to have a separate political existence and the status of others would be changed to a considerable degree from the one they enjoy today. The primary question relates to the territorial integrity of the present Indian States. Is the territorial integrity of each individual Indian State guaranteed and is it to be in no way disturbed during the course of the constitutional settlement? If the integrity is taken to be absolutely guaranteed, then each of the units mentioned in Schedule I of the Government of India Act, 1935, in the table of seats of the Council of State and the Federal Assembly, must be considered as a separate and an independent unit. And each of these will, according to a strict interpretation of the Delegation proposals, be a unit of the same status as an Indian Province. In this event all the Indian States mentioned in the first sixteen divisions of the table of seats of the representatives of Indian States in the schedule will be maintained immediately in their present form, and possibly retained thus for a very considerable time in the future. For, if no adjustment is allowed to be made at this stage when the constitutional structure is being erected, then it will obviously be very difficult to bring about any drastic changes by the ordinary procedure of constitutional amendment that would be prescribed later.

PROPOSALS FOR INDIAN STATES UNIONS

The territorial integrity of Indian States mentioned in Division 17 of the table of seats has not, it should be noted, been completely maintained. Most of these have been attached for the purposes of administration to other larger Indian States and under the Attachment of States Act, 1944, all the Indian States included in this division may be attached to any other Indian State. At the time of the passing of the Attachment of States Act, Government had also contemplated either consolidating the territories of these Indian States with districts in British India or forming groups from among them. Is it permissible to think that the manner in which the Indian States of Division 17 have already been treated or could have been treated could be applied to Indian States in Divisions 1 to 16? It would appear from certain recent happenings that the concept of the territorial integrity of Indian States might not be allowed to bar appropriate constitutional progress. The Cabinet Delegation has recommended to Indian States the formation of convenient administrative units where this is necessary and possible. It is also reported that a large number of the smaller Indian States in various parts of India have under consideration schemes for the formation of groups not only for specific administrative purposes but for all aspects of governmental authority. This move has the sanction and blessing, it is said, of the Political Department. If this is true, considerable inroad would have been made in the concept of territorial integrity. If a ruler sees nothing to object to in obliterating boundary marks as between his state and a neighbouring state and has no objection to forming a conjoint government for the joint area, nothing much is really left of the claim to the territorial integrity of an Indian State. If an Indian State can merge itself into other Indian States for the purpose of forming a large and convenient administrative unit, there is no reason why a small Indian State may not merge with Provincial territory, if that step is deemed more convenient.

CONSTITUTIONAL POWERS OF RULERS

The second problem is that concerning the rights and privileges of rulers. We are here concerned not with the technical definition of the constitutional position nor with the financial implications of the ruler's status. It is the practical constitutional results of the definition of rulers' rights and privileges that are important. Will

the rights and privileges of rulers result in the need for the maintenance of the separate constitutional or administrative entity of each individual Indian State? It is said that in the proposals for Unions of Indian States adumbrated recently, a complete cession of the political and constitutional powers of the rulers, to be vested in the joint authority for the whole group, has been proposed. If this is so, it would, together with the waiving of territorial integrity, make possible most of the adjustments that may be necessary in the new constitutional structure.

The *communique* issued by the Political Department announcing the attachment of small units to larger Indian States stated that the scheme of this attachment contained "due provision for the continued integrity of the 'attached' units and of the existing powers and privileges of their talukdars and shareholders in so far as they are compatible with modern requirements and subject further to review after a period of seven years, as also for the allocation of a suitable proportion of the revenue for their personal requirements." It is true that the Indian States attached in 1943 were all very small and that in a large number of them almost no modern political government existed. The attachment of the smaller Indian States was a belated step which rid us of an anachronism which had become both obviously ridiculous and inconvenient. In the context of the future the surviving small Indian States of today may be considered to be on the same plane as the attached Indian States. It is more than merely a matter of opinion whether the continued existence of a large number of units whose extent and resources are not larger than those of even one or two well sized taluks or tahsils in an Indian province should be tolerated and not only be tolerated at present but also be perpetuated in the constitutional structure which presumably builds for a long time in the future.

REPRESENTATIVE GOVERNMENT IN INDIAN STATES

Attention must also be paid in this connection to the progress made in representative democratic forms of government within the Indian States. During the last year or two the Political Department has taken for granted and the rulers of Indian States have conceded the desirability of the peoples of Indian States being increasingly associated with their rulers in the business of government. Wherever such association takes place on any considerable scale the solution of the problem of Indian States is made easy. Where popular

parliamentary forms of government are set up no considerable difference will subsist between the constitutional structure in the Indian Provinces and that in the Indian States. The greater the similarity that exists between the two in political conditions and constitutional forms the easier will be the process of joining up the different types of units for purposes of proper administrative and political government. The main preliminary questions in the problem of the Indian States are, therefore, a definition of the concept of territorial integrity and of the rights and privileges of the rulers in the new context and the progress in the direction of representative government within the areas of the Indian States.

STATUS OF LARGEST STATES

It has been indicated above that in case it is possible to disregard, where necessary, the boundaries of Indian States, only those Indian States which have a minimum population and a compact area could survive and be allowed to function in the new constitution as separate administrative and political units. Among the Indian States that survive as separate administrative and political units it is suggested that a difference be made between those who would be federating units in their own right and those others whose political status would be that of sub-units in larger federating units.

Just as the size of the ordinary Indian district provides some measure of the proper size for separate administrative units, so the size of an Indian province would indicate the desirable size for an independent federating unit. The federating unit in the new Indian Union would have such large powers and responsibilities that it must have very considerable internal resources for discharging all the responsibilities. The average size of an Indian province is very large as compared even to the larger Indian States. Among the Indian provinces the two having the smallest populations are Sind and the N. W. F. Province. In both these the population varies between 30 and 50 lakhs. A population of 30 lakhs may then be considered as the minimum population which an Indian State must have before it ranks as a federating unit by itself. If this test is adopted only Hyderabad, Mysore, Travancore, Kashmir and Gwalior would be entitled to consideration in this respect. From among these, the claims of Gwalior are vitiated because the whole of its territory does not form a compact block. Also, the larger Indian States in Central India can easily be grouped together for

the formation of a large federating unit and Gwalior would obviously be a proper component of this federating unit. The peculiar position of Mysore and Travancore makes it highly desirable that these states should take the lead in the formation of the federating units for their particular linguistic and cultural areas, that is Karnatak and Keral. Without such participation by the two Indian States the formation of these federating units would be almost impossible. Therefore, in the interests of a proper territorial and constitutional organisation it would be best if they agree to become parts of federating units even though they could ordinarily claim to being treated as independent federating units. In the case of Hyderabad not only are the resources and the territories on a par with those of an average Indian province but also the highly composite character of the population makes it impossible for it, as a whole, to be included in any other neighbouring federating unit. Similarly Kashmir with its vast area, which is geographically sharply demarcated and with its culturally distinct population, cannot on any cogent grounds be included with advantage in any neighbouring federating unit. The two states of Hyderabad and Kashmir would then form independent federating units of the same status as the provincial federating units and would be vested completely with powers other than those ceded to the Union. It would be for these two Indian States to decide whether they would or would not join the Group governments of the areas in which they find themselves included.

For the rest the surviving Indian States would obviously form units which would be subordinate units in the larger federating units. A brief discussion relating to the different types of subordinate units will occur at a later stage. Whatever the character of those units and their measure of autonomy, for purposes of forming the federation the Indian States will not be considered independent but will merge their identity in the larger federating unit. In the formation of these federating units again either of the processes, that of association with British Indian territory or that of association with the territory of other Indian States, may be followed. And on the postulates stated above no effort need be made for necessarily joining together Indian States with other Indian States. The nature of the association will be dictated by considerations of geography and of linguistic, etc., homogeneity which would govern the formation of the appropriate federating units.

CONCLUSION

A proper adjustment of the position of Indian States within the Indian Union would require a number of steps. The first step is the establishment of forms of government akin to those of a parliamentary democracy in the Indian States. Such an assimilation of the conditions of political rule between the Provinces and the Indian States is necessary for the smooth working of a federal Union. Secondly, it must be possible to abolish the existence, as separate political entities, of all the Indian States whose size and resources are incompatible with the maintenance of a minimum standard of administrative efficiency. Thirdly, it should be possible for all Indian States which are not large enough to be federating units by themselves to join as sub-units with other Indian States or other Provinces or parts of Provinces to form the appropriate federating units. No attempts should be made in this process to bring about an artificial grouping only of Indian States with other Indian States and no difference should be made, for the purpose, in the areas of Provinces and of Indian States. The Indian States which are federating units in themselves should be permitted and also induced to join Group governments. In short Indian States should have the option of forming federating units with others or of joining other federating units and also of joining or forming Groups. None of these procedures are incompatible with anything contained in the statement of the Cabinet Mission. On the contrary all of these flow out of and are justified by the pronouncements of the Cabinet Mission as well as the statements and actions of His Excellency the Crown Representative in recent years.

VI. COMPOSITION OF FEDERATING UNITS

FORMATION OF FEDERATIONS AND CONSTITUENT UNITS

In the large majority of federations formed in the past the formation of the federating unit was a problem not faced at the time of forming the federation. Most modern federations were formed by units which had separate political existence for some time before the federating act took place. The States which brought the United States of America into existence, the Cantons of Switzerland, the Provinces of Canada and the States of Australia are all examples of this process. The formation of a federation simultaneously with the dissolution of the old order has taken place in very few instances.

The dissolution of the Austro-Hungarian Empire led to the emergence of a number of independent states. Some of these were potential federal states, such as Yugoslavia or Czechoslovakia. However, the formation of these states took place under conditions which did not allow for either time or deliberation for making the federal state after an initial determination of the federating units. In Yugoslavia an attempt was made to form a unitary state and to ignore facts of cultural and ethnic differences, with results which were disastrous. In Czechoslovakia even though the constitution was not strictly federal a demarcation of separate regions was attempted with some guarantee of autonomy, especially in the case of Ruthenia.

MOBILITY OF FRONTIERS: GERMAN REPUBLIC

In the formation of the German Republic after 1918 the readjustment of the territory of the States assumed considerable importance. Dr. Hugo Preuss, the architect of the Weimar Constitution, pointed out that "the individual States were the products of purely dynastic politics which almost everywhere ran counter to the natural relations of populations and races, separating what should have been united and uniting elements that had nothing in common. . . . He demanded the territorial redistribution of the States on the basis of the right of populations to self-determination according to their needs and their political and economic inclinations, with the intervention, by the sanction and under the direction of the Reich." The readjustment of territory did not take place before the new republic was launched; but the constitution of the republic contained important enabling provisions for alterations in the territorial composition of the Reich. The Weimar Constitution gave full recognition to the principle of mobility²² of frontiers and incorporated in its provisions the principle of self-determination in the organisation of states.²²

SELF-DETERMINATION IN U. S. S. R.

In the extent of area and population and the differences in race and religion the German problem was vastly simpler than the Indian; the German Empire was also almost entirely unilingual. The Indian problem can be compared in its complexity only to

²² Vaze: *The Formation of Federations*, Gokhale Institute of Politics and Economics, 1943, pp. 16-20.

that faced at the formation of the U. S. S. R. In Russia the revolutionary government faced squarely the double problem of the reformation of the basic unit and of the joining together or the union of the newly formed units. Conditions in Russia were, however, so disturbed immediately after the revolution that the formation of the new units took place under a process of disruption. It may be said that from 1918 to 1922 the territories of the former Russian Empire, remaining after the separation of Poland and Finland, were theoretically independent states. The formation of all these independent states took place under the same general cry of national self-determination and the test applied in the formation of the new units was everywhere that of linguistic, ethnic and cultural affinity. After 1922 these units came together and formed a progressively closer and closer union, both in theory and in fact.²³

DELEGATION STATEMENT AND REFORMATION OF PROVINCES

The proposals of the Cabinet Delegation contain no reference to the reformation of Provincial units. There is also nothing in the proposals of the Delegation which would prevent such a reformation, provided the reformation did not affect the suggested divisions into Sections or Groups. If the reformation of Provinces affected boundaries between the Provinces grouped together in Sections A, B and C, this would, no doubt, affect the fundamental conditions laid down by the Delegation.

EFFECT OF DEFINITION OF GROUP BOUNDARIES

It has been urged that even apart from the changing of boundaries between Groups A, B, and C, it is not permissible to change the boundaries of Provinces within a Group itself. The statement of the Cabinet Delegation refers to the powers, etc., of Provinces and names the present Provinces in relation to representation in the Constituent Assembly and the formation of Groups. The election of representatives to the Constituent Assembly had, of course, to take place on the basis of the present Provinces, but it does not follow that all reference to Provinces in the statement of the Delegation must be construed to mean only the present Provinces with their exact boundaries. In this connection much

²³ Batsell W. R., *Soviet Rule in Russia*, 1929, chapter VI.

has been made of the right to opt out of a Group given to a Province. The right, it is said, can only accrue to an existing Province, named in the composition of Groups. This interpretation seems unwarranted. Most written constitutions define the rights of constituent units and also carry schedules etc. naming them; but a change in the area or composition of these units is never held to vitiate the rights given. A large number of constitutions also contain specific provisions for bringing about changes in the boundaries of constituent units. The Government of India Acts of both 1919 and 1935 had such provisions. Because an act or statement names specific political units or bases organisations on their present boundaries, this does not mean that it assumes them to be unalterable. Further, there is nothing in the right of 'opting out of a group which can be associated only with the Provinces as they exist and not with the reformed Provinces. On the contrary, it may be argued that if the Provinces are reformed so as to be made more homogeneous, political action on the part of such units has real significance and, therefore, the right to opt out should be exercised only after the reformation of basic units. It is true that the statement contains no reference to the reformation of Provinces just as it contains no reference to a host of other important matters which were not basic to the structure of the proposals or did not directly arise out of the controversy between the Congress and the League. It is clear, however, that the Delegation was aware of the possibility of the reconstitution or division of Provinces as being part of the process of constitutional settlement. In considering Muslim demands they consider the possibility of a radical partition of Bengal and the Punjab and reject it only because they feel that this would be "contrary to the wishes and interests of a very large proportion of the inhabitants of these Provinces."

BASIS OF REFORMATION

As the statement lays down no specific procedure for the reconstitution of Provinces, this will have to be evolved by the Constituent Assembly itself. As long as the change of boundaries does not affect Grouping or does not affect the balance of power between the communities in the government of the Union, it is not likely to raise a major communal issue. Therefore, the adjustment of boundaries of Provinces and the creation of new Provinces in Group A, at least, should be a matter dependent entirely on the wishes of the majority of representatives from within that Group.

Prima facie little difficulty should arise out of this attempt. The principle of linguistic Provinces has been long accepted by the Congress and has been emphatically endorsed by the Nehru Committee. The principles on which the delimitation of boundaries of the new Provinces should proceed are capable of being defined fairly easily, and the reconstitution itself need not wait on the elaborate adjustment of boundaries which an independent Commission could do later in a leisurely manner. It must be confessed, however, that in fact the issue is more complicated. For, there are powerful vested interests which are opposed to the reformation of Provinces. All the financial, trading, industrial, professional or salaried classes who desire an unhindered field for their activities look askance at the step. It is desired strongly only by the representatives of the backward and exploited regions and peoples. In brief, the economic and intellectual exploiters are arrayed against the demand of the backward peoples and it is easy to see how, under one pretext or another, it is likely to be denied. That, however, is a problem in the balance of political power and has nothing to do with the frame-work of the proposals of the Cabinet Delegation. For us, it is sufficient to note that the Delegation's proposals themselves do not prevent such reconstitution of Provinces as might be desirable from the point of view of raising a durable constitutional structure in India.

URGENCY OF REFORMING PROVINCES

The urgency of the measure arises out of the need for giving meaning to the federating act. The existing Provinces have no special relevance for the federating process. They are units only of British creation and have never functioned as independent political units. They are the results of an order in which the Indian Empire was ruled as a highly centralised unit, and the Provinces were formed merely for administrative convenience. To treat these units as the federating units would not only be meaningless but also positively harmful. A large number of these units are so composite in character as to be potential federations in themselves, and in a number of instances there is no homogeneity of sentiment or interest between all their parts. If the federal structure is to be raised on a basis that is durable, the settling of Provincial constitutions and the vesting of powers in Group authorities must be done by units which are homogeneous, which have a feeling of distinct identity among themselves and which represent a common way of thinking.

Such units must be formed from among the present Provinces and Indian States and the constitution of the future must largely be discussed in relation to the requirements of these units in order that real problems may come to the surface and be satisfactorily solved. A variety of problems such as those of the safeguarding of minorities or the distribution of voting strength will arise in the settlement of provincial constitutions. The appropriate solutions for these and even the manner of approach to them will be different if they are dealt with in the context of heterogeneous units like Madras, C. P. and Bombay, than if they are settled as for, say, Kerala, Andhra, Karnatak, Gujerat etc. Similarly the extent to which authority should be vested in the government of the Group or the constitution of sub-provincial units and their powers are problems which could be discussed realistically only for the basic homogeneous units wrought by historical forces. An attempt to raise a constitutional structure on the basis of the existing Provinces will lead to a perpetuation of anomalies and difficulties and to a very unsatisfactory political situation in large regions of the country. The plea for getting on with the work without immediately reforming the federating units rests on an incomplete understanding of the fundamental and lasting nature of the process and the difficulties attendant on subsequent change or adjustment.

NEW UNITS: POLITICALLY HOMOGENEOUS

If the formation of new federating units is thus urgent as a preliminary step, a basis must be indicated on which the quest for the federating units can be fruitfully conducted. The basis is given by the nature of the problem of federalism. A federation is the result of the coming together of units which are conscious of separate identity; the federating units must, therefore, be formed of regions, the peoples of which are conscious of separate identity, i. e., as distinct from their neighbours and are conscious of a feeling of unity among themselves. A sense of oneness among peoples because of commonness of history and tradition, race, language or religion will obviously give the basis of the federating units. Our quest is for an area where homogeneity with reference to political action and political allegiance is found existent. Difference in geographical factors or in economic conditions does not ordinarily vitiate a sense of political unity and within even a large political unit it is always possible to provide for regional differences by division into

administrative areas or by the introduction of the principle of local autonomy.

NEED FOR UNILINGUAL UNITS

The linguistic principle will be seen to yield the proper limits for the new political units over a large part of India. That the federating units should be unilingual might be easily taken for granted. A variety of languages would make democratic governments very difficult in a unit; and on this if on no other ground, the creation of new federating units must provide for the people in the federating unit speaking overwhelmingly one language. The primary federating unit should obviously also be as large as political homogeneity permits. This would make for ease in the working not only of the Union but would be advantageous also from the point of view of the federating unit itself. Success of schemes of economic planning and social welfare, as well as the possession of political strength, depend on the largeness of territory and resources commanded by a political unit. In a federation where large powers in respect of economic matters are vested in the federating unit, an unnecessary multiplication of the number of federating units would be highly wasteful.

LINGUISTIC PROVINCES

Outside the large Urdu-Hindi-Hindustani block, the language test will yield units which, in all instances, are large enough and homogeneous enough to satisfy the foregoing considerations. The divergence between language and nationality which has been sometimes noticed in the settlement of boundaries in Central and South Eastern Europe, is almost non-existent in India. In India the mother-tongue of a person gives the proper clue to his nationality and the language test was adopted in this sense in the settlement of the boundary of Orissa. All compact blocks of contiguous territory inhabited dominantly by people speaking one language would thus form the basic federating units. The federating units yielded by the language test would be Kerala, Tamilnad, Andhra, Karnatak, Maharashtra, Gujarat, Orissa, Bengal, Assam, Sind and the Panjab.

THE CENTRAL REGIONS

As pointed out above, this leaves unsolved the problem of the demarcation of the federating units within the Urdu-Hindi-

Hindustani area. This will have to be solved chiefly in the light of geographic considerations. The large block of the Rajputana and the Central Indian States on the fringe of the Hindi-Hindustani block would appear to be an appropriate federating unit by itself. This would leave the present territory of U. P. and the Hindi districts of the Central Provinces together with the area of Indian States contained within them to be refashioned, if necessary, into two or three federating units formed on significant regional lines.

In Rajputana and Central India, the federating unit will be formed of almost purely Indian States' territory. On the test indicated in the last section, only a limited number of large Indian States will be left within the whole of this territory. Unless new compact units are capable of being formed and are allowed to be formed of any contiguous smaller Indian States, all the territory belonging to the smaller Indian States in this area will be attached to one or the other of the surviving bigger Indian States. These big Indian States will form the quasi-autonomous units of a single federating unit covering the whole of this area.

BENGAL AND THE PANJAB

In Bengal and in the Panjab the division of religion breaks across basic ethnic, cultural and linguistic unity. The division is so acute that the possibility of forming more than one federating unit out of each of these areas has to be contemplated. In this case the province of Bengal may have to be separated into two units, the dominantly Muslim Bengal and the other the dominantly Hindu Bengal; similarly, the province of Panjab would be split up into (i) the dominantly Muslim Panjab and (ii) the dominantly Sikh-Hindu Panjab.

The comparatively large and somewhat diversified federating units whose formation has been postulated would give rise to problems relating to the formation and powers of sub-units within the federating units.

SUB-UNITS IN FEDERATING UNITS

The needs of special regions and the special position of Indian States would call for a variety of devices and degree of devolution within the boundary of a federating unit. The federating unit in the proposed Union is the nuclear and the most important unit and

may be composed of either Provincial or Indian State territory or a combination of the two. The federating unit gives up control over specified subjects to the Union. All the remaining powers are held by itself. If Groups are formed, the federating unit may in turn cede some powers to the Group government. Initially, however, it is the federating unit that possesses the plenitude of power. A federating unit may cover large areas in which a variety of economic or geographical conditions may be present. To meet the needs of regions with any special characteristics or those of large city units included in the Province appropriate constitutional provisions must be made.

In Russia there is a graded set of political units. The autonomous republics form the U. S. S. R. by federating together, but within each autonomous republic are also included autonomous regions and autonomous districts. In Germany within each State-Länder special provision had been made for the self-government of large rural areas and the big cities. In France, before the war, claims of "regionalism" were being pressed insistently, and in Britain there was the demand for Home Rule in Scotland and Wales. The authors of the Montford Report were aware of similar problems in India on account of the large size of some of the Provinces. They, therefore, contemplated the possibility of creating a sub-Province, with a considerable element of autonomy, within a Province.

GENERAL POWERS OF FEDERATING UNITS

Before considering the possible gradations in the Indian Union with their appropriate scope and functions, we might first indicate the essential requisite powers and characteristics of a federating unit, if it is to maintain its integrity. There is an essential constitutional difference between the status of a federating unit in a federation and the status of a sub-Province or any other local authority. The federating unit would have powers and functions in its own right derived, not from any superior constitutional authority, but from the written constitution itself. The powers and functions of a sub-Province or other unit would be conferred on it by the legislature of the federating unit. For the whole Province or federating unit, a single legislature exercising certain rights and powers including those of creating the autonomous units and endowing them with powers must, of course, exist. An executive

for the whole Province goes with the Provincial legislature. It would also be necessary that recruitment to superior services, akin to the All-India Services of the present day, should also take place for the Province as a whole. There would be similarly a single Supreme Court for the whole Province and the highly specialised and research services and institutes would be provincial. In the legislative sphere, it is clear that the all-province legislature must have powers of a general and overriding character in all matters, economic and social. The civil and criminal law would be uniform for the whole province as also industrial and commercial legislation. The Province would have to have the necessary powers required for economic planning, including crop planning. It would maintain the major social services and lay down the main lines of social legislation.

SUB-PROVINCES

After reserving all these powers for the provincial legislature, the measure of autonomy of a sub-Province may vary according to the needs of the situation. It would be possible to have sub-Provinces endowed with powers almost equal to those of the powers of the Indian Provinces under the Government of India Act of 1919. Such sub-Provinces could control their system of land revenue administration and might even have control over administration of justice up to the stage of the jurisdiction of the Supreme Court. In most economic matters such as agriculture, forestry, fisheries, and industry, small and large, they could enjoy concurrent powers of legislation subject to the over all supervisory, directive and co-ordinating powers vesting in the all-province legislature. Such a constitution for a sub-Province would be suitable where a Province or other federating unit was composed of two or more equally important sub-units which differed considerably from each other in economic or other circumstances.

In the large majority of instances, however, a sub-Province with these large powers would not be called for. For most regions provincial powers such as those enjoyed by Provincial Councils under the constitution of, say, South Africa, would be sufficient. The main heads of powers here are: (1) specified tax sources, (2) borrowing powers with the consent of the superior government, (3) local self-government institutions, (4) local works and undertakings, (5) agriculture, forestry, fisheries, etc., (6) public

health, including hospitals and charitable institutions, (7) education other than higher education. With these powers will also be associated the right to the establishment, tenure, appointment and payment of officers, and the holding of public lands and other property.

EXAMPLE OF SCOTLAND

There might, however, be other instances where the main difficulty is not that of variety of conditions or of any cleavage of interests, but arises out of fear of neglect because of the distance from the centre of political power. In this case the appropriate method might be not that of creating a sub-Province but, on the analogy of Scotland, creating a special Cabinet appointment and resorting to departmental devolution. The existing arrangements for Scotland in the British Government are as follows: There is a Scottish Office at the head of which is the Secretary for Scotland. This is a principal Secretaryship with a seat in the Cabinet. There is also a Lord Advocate and a Solicitor General for Scotland who are members of Government but not of the Cabinet. Scotland has had since olden times its own system of laws and separate courts with a distinctive procedure, etc., and separate bills have to be passed for Scotland on many subjects. These are, by an established convention, always referred to a Select Committee consisting of all Scottish members. The Secretary of State for Scotland deals with all special Scottish Departments and has thus a diversity of subjects under him. There are a number of Scottish Departments each with its Permanent Secretary and office in Edinburgh. There are, for example, a Scottish Board of Health, a Scottish Education Department, the Board of Agriculture for Scotland, a Fishery Board for Scotland, etc. In the hands of strong Secretaries of State and under pressure of a demand for Home Rule, this system seems to have yielded fairly satisfactory results during the last two decades. The special responsibility cast on a member of Cabinet rank, who is invariably a Scotchman with special departments to look after Scottish affairs, has undoubtedly retrieved Scottish interests from neglect. In all those Provinces where the homogeneity in social and economic structure and interest is considerable, but where, because of the widespread extent of the area of the Province, certain regions might be inevitably left away from the centre of the main political government, the Scottish device would seem to be the most appropriate.

LARGE CITIES

The problem of large cities is in a class by itself. A suggestion has been made that the largest cities should be cut apart from their hinterlands and should be constituted into separate and independent federating units. The suggestion is obviously based on a misunderstanding of the nature of the federating unit. The life of a large city is highly one-sided and the lack of appropriate co-ordination with its hinterland is even more harmful to itself than it would be to the hinterland. The city, by its political or economic constitution, is not fitted to be the well-nigh omnipotent and self-sufficient federating unit contemplated in the Indian Union. This is apart from the great injustice involved in divorcing the concentrated resources of an urban centre from the Province in which it is situated. Such a divorce would cripple the intellectual and social life of a Province and would rob it of its natural centre of all important activities. It would create great difficulties in the way of internal economic co-ordination and it would cut into the financial resources of most Provinces to a disastrous extent. Such a divorce would necessarily have the reaction of the Provincial units, deprived of their natural centre, seeking to create rival centres within their own area. Therefore, a step which leads to the cutting off of large cities from the Provinces or regions in which they lie would, in every way, be harmful. At the same time the problems of these large cities with their mixed populations would need special attention, and these could only be met by creating semi-autonomous regional authorities on the lines of large city corporations elsewhere. These city corporations would be endowed with powers over public health, roads, bridges and other similar works, elementary and secondary education including vocational and technical education, building and housing, town planning, the undertaking of trading and industrial enterprises with large planning powers and powers to undertake all types of social welfare and cultural activities. An active city corporation armed with such an amplitude of power would be able to deal adequately with all problems raised in the administration of these big cities.

AUTONOMOUS DISTRICTS

The device of the sub-Province would be applicable to the large Indian States which will form part of a single federating unit

with parts of existing British Indian Provinces. Thus, Indian States like Mysore and Travancore would be sub-Provinces of Karnatak and Kerala. Similarly, in the single federating unit formed out of the big surviving Indian States in Rajputana and Central India, each Indian State may enjoy the status of a sub-Province. However, a large number of Indian States which survive as separate sub-units in larger federating units would be smaller than even an average provincial district. It would be inappropriate to vest them with the status of a sub-Province; arrangements for special treatment of regional requirements indicated above would also not suit their circumstances. It would be necessary, in this case, to adopt the principles evolved in the treatment of sub-feudatories or *jagirs* in some Indian States. These small units need not have special legislatures and their law- or rule-making sphere would be limited to the normal sphere, which itself could be wide, viz., that of local self-government authorities. However, they would be treated as autonomous units mainly for purposes of administration. A wide variety of administrative duties could be delegated to these units. In this manner separateness of political identity would yet not result in any waste or in a break-up of the area of legislative or executive plan or action.

The formation of the most suitable federating units is, at least, as important a preliminary of the federating act in India as it was in the U. S. S. R. Opposition to this process will leave large problems of irredentism and regional dissatisfaction such as made for unstable political conditions in Central and South Eastern Europe between 1919-1939.

CONCLUSION

The only limitation on the process of the formation of new federating units laid by the statement of the Cabinet Mission is the definition of the boundaries of Groups. The formation of the new federating units could not be allowed to disturb these boundaries. The redistribution of the area within a Group among newly formed federating units is both possible and necessary. The new units will have to be unilingual and homogeneous in political sentiment, and they should be as large as possible while fulfilling these conditions. The problems created by the incorporation of diverse geographic or economic regions within a federating unit or by the incorporation in them of the separate units of Indian States are all capable of being dealt with by appropriate political and administrative devices.

VII. ISSUES SETTLED AND ISSUES OUTSTANDING

We have so far considered problems, the lines of whose solution had been in the main indicated in the statement of the Cabinet Mission. We have seen how strong the Union Government is proposed to be and to what strength it is likely to attain in the near future. We have also considered what units could take part in the formation of the Union, the manner in which they could be constituted and the gradation of the division of powers that would be necessary among a tier of these units for a proper functioning of the suggested structure. The formation of Groups, the proper adjustment, in a variety of ways, of the status of Indian States of different sizes and resources, and the manner of bringing about adjustments in the various regional and constitutional units so that large federating units may be formed; all these have been indicated as either arising out of the proposals made by the Cabinet Mission or as not being incompatible with the letter or the spirit of the statement, and also as being necessary for building up a lasting political edifice. It is now necessary to enter into a field where the statement of May the 16th is, deliberately, either vague or silent.

In order to understand the vagueness of the statement and its lacunae, a study of its anatomy, the manner in which it was put together, should prove useful. It has been pointed out by the Cabinet Mission that they had to issue their statement because even after the Congress and the Muslim League had had a full exchange of views and had made considerable concessions in order to try to reach a settlement, it was not possible to close the remainder of the gap between them. In these circumstances, the Cabinet Mission put forward what they considered to be the "best arrangements possible to ensure a speedy setting up of the new constitution." The arrangement of the Cabinet Mission is a *via media*; it closes a gap, and to understand its implications it is necessary to see what the outstanding differences of opinion between the two parties were and how they have been settled. For this purpose it is unnecessary to go back to the position taken up by the two parties on the eve of the issue of the statement. The memorandum sent by the Muslim League and the note of the Congress embodying points or demands suggested by way of an offer or as a basis for agreement, in accordance with the decisions of the Simla Conference, embody the final positions of the two parties. We have three documents for consideration: (i) a memorandum by the President of the Muslim

League, (ii) points suggested on behalf of the Congress, and, (iii) a note by the Congress on the memorandum of the Muslim League.²⁴ The first two of these documents are dated 12th May and the third, not clearly dated, may either belong to the same date or to the day after. The matters raised in these three documents may be divided into three sections. There are some on which there was no material disagreement between the two parties; there are others in which the grounds of difference were resolved by a definite decision or pronouncement contained in the statement of the Cabinet Mission; there is a third group of questions which the Cabinet Mission left either vague or did not touch at all.

AREA OF AGREEMENT

In the first group fall two matters. Firstly, as to fundamental rights, both the League and the Congress agree that fundamental rights and safeguards concerning religion, culture and other matters should be provided for in the constitution. There was a difference of opinion regarding the manner in which the provision should be made. The Muslim League wanted the provision to be in Group and Provincial constitutions, whereas the Congress thought that their proper place was the All-India Federal Union constitution. The Cabinet Mission have left the particular question open by saying that it will be the duty of the Advisory Committee to advise whether the rights should be incorporated in the Provincial, the Group or the Union constitutions. Another matter in regard to which there was no material difference of opinion was the revision of the constitution at the end of ten years. The Muslim League demanded a specific provision whereby any province could by a majority vote of its Legislative Assembly call for reconsideration of the terms of the constitution and would have the liberty to secede from the Union at any time after an initial period of ten years. The Congress had no objection to providing for a full reconsideration at the end of ten years. Regarding the right of secession, the Congress note has a curiously phrased comment. It says, "Though it is implied, we would avoid a reference to secession as we do not want to encourage this idea." The statement of the Cabinet Mission avoids reference to secession and instead of giving the right to reconsider at any time after an initial period of ten years, it

²⁴ Papers Relating to the Cabinet Mission to India, 1946, (Cmd 6821, Cmd 6829, Cmd 6835, Cmd 6862) 1946.

provides for it after an initial period of ten years and at ten yearly intervals thereafter.

CONSTITUTION MAKING

There was a larger group of issues on which the difference of opinion was much more material, and in which the bridging of the gap was done in a definitive manner by the Cabinet Mission. First among this group was the question of the number and status of constitution-making bodies. The demand of the Muslim League was for separate constitution-making bodies for the groups of Muslim Provinces and Hindu Provinces. The two bodies, it was suggested, should first meet separately and then come together only for the purpose of the Union constitution. The Congress demand was for a single Constituent Assembly, and no reference was made in the Congress statement to groups of Hindu or Muslim Provinces. The Cabinet Mission decided definitely in favour of a single Constituent Assembly. It, however, as definitely adopted the Muslim idea of a set of initial Group units.

PROVISION REGARDING GROUPS

This question of the formation of Groups may further be clarified in the light of the documents of 12th May. All that the Congress would agree on 12th May was that "Groups of provinces may be formed and such Groups may determine the provincial subjects which they desire to take in common." On the other hand, the Muslim League demanded that "there shall be a separate constitution-making body for the six Muslim Provinces which will frame constitutions for the Group and the Provinces in the Group." It added that "after the constitutions of the Pakistan Federal Government and the Provinces are finally framed by the constitution-making body, it will be open to any Province of the Group to decide to opt out of its Group." On this matter of opting out, the comment of the Congress was as follows: "There is no necessity for opting out of a Province from its Group as the previous consent of the Provinces is necessary for joining the Group." In the light of these statements of differing views, it is easy to see how the final picture was made up by the Cabinet Mission. The Cabinet Mission, in laying down the basis for forming the constitution, accept the principle, as stated by the Congress, that Provinces should be free to form Groups and that each Group may determine

the Provincial subjects to be taken in common. On the acceptance of this general principle was superimposed, as the immediate step in the formation of the new constitution, a variation of the Muslim demand for forming an initial Group of the Muslim Provinces. It was impossible for the Mission, for plain geographical reasons, to accept the demand for a single Pakistan Group. Therefore, they split the Pakistan Group into two, calling them Groups B and C, and leaving the Group of Hindu Provinces, as being all contiguous, in a single block of Group A. In the initial formation of the Group and Provincial constitutions, it is the Muslim League plea that is accepted, and this is made indubitably clear by the provision that a Province could elect to come out of any group in which it had been placed as soon as the new constitutional arrangements had come into operation. As the previous Congress comment had made clear, the necessity of a provision for opting out exists only when no provision has been made for obtaining the initial consent of a Province for joining a Group.

UNION SUBJECTS

There was a difference of opinion relating to Union subjects and the Union legislature also. The Muslim League was doubtful whether the Union should have any legislature at all, and the subjects suggested by it for the Union were foreign affairs, defence, and communications necessary for defence. The Congress was insistent that the Union government should have a legislature, and suggested a much larger list of Union subjects which included fundamental rights, currency, customs and planning, as well as "such other subjects as, on closer scrutiny, may be found intimately allied to them." The Cabinet Mission provided definitively for a Union legislature, but adopted almost entirely the list of Union subjects as suggested by the Muslim League.

COMPOSITION OF CONSTITUENT ASSEMBLY

There were certain other matters, mainly of a procedural character, on which also a difference of opinion between the League and the Congress persisted, and in regard to which it was necessary for the Cabinet Mission to give a directive. Firstly, there was the basis of the election of representatives to the constitution-making body. Here the League proposal was that the method of election should be "such as would secure proper representation to the various

communities in proportion to their population in each Province of the Pakistan Group." The Congress thought that the most suitable method of election would be that which would give "proper representation to the various communities in proportion to their present representation in the legislatures." The Congress note adds, "If the population proportion is taken, we have no particular objection, but this would lead to difficulties in all the Provinces where there is weightage in favour of certain communities," and, finally, that "the principle approved of would necessarily apply to all the Provinces." The last sentence was necessary because the Muslim League had made no suggestion relating to the formation of the constitution-making body from the Hindu Provinces. It is curious that circumstances led the League, in this instance, to stand up in favour of representation in proportion to numbers in the population, while it is the Congress which seems reluctant to give up the weightage existing in favour of certain communities. The Mission accepted the principle of representation in proportion to population and decided to apply it universally.

COMMUNAL MAJORITIES

Another question of procedure related to voting on decisions in the Constituent Assembly and in the Union Government. The proposal of the Muslim League was that in the joint constitution-making body no major point which affected the communal issue shall be deemed to be passed unless the majority of the members of the constitution-making body of the Hindu Provinces and of the Pakistan Group are separately in its favour. Regarding the affairs of the Union, the League suggested that no decision, legislative, executive or administrative, in regard to any controversial matter, shall be taken, except by a majority of three-fourths. As against this the Congress suggested that no major point in the All-India Federal Constitution, which affects the communal issue, shall be deemed to be passed by the Constituent Assembly unless a majority of members of the community or communities concerned are separately in its favour. With regard to decisions in the Union legislature or executive, the Congress made no definite proposal in their first statement. They, however, seem to imply in the second note that the provision suggested for the working of the Constituent Assembly would also apply to the Union legislature. For the Congress comment on the League proposal for a three-fourths majority relating to Union decisions is as follows: "This proposal is

so sweeping in its nature that no government or legislature could function at all. Once we have safeguarded major communal issues, other matters, whether controversial or not, require no safeguard." The final position accepted by the Cabinet Mission on this question was, in the main, the position taken up by the Congress.

ARBITRATION AND REFERENCE TO FEDERAL COURT

Lastly, the points put forward on behalf of the Congress contained two suggestions for settling disputes to which no reference was made in the League memorandum. The Congress suggested that "in the event of a dispute arising in the process of constitution-making, the specific issue shall be referred to arbitration." It also suggested that, "in case of doubt as to whether any point is a major communal issue, the Speaker will decide or, if so desired, it will be referred to the Federal Court." The Cabinet Mission did not incorporate any provision relating to arbitration in their statement. However, they did accept the suggestion of the Congress relating to the determination of a communal issue, and provided that the Chairman of the Constituent Assembly shall decide which, if any, resolutions raise major communal issues and shall, in certain circumstances, consult the Federal Court before giving his decision. It is noteworthy, in view of later controversies, that in all the notes, memoranda, etc., during the discussions, the Federal Court is brought in only by the Congress, and that only in relation to deciding whether a particular question was or was not a major communal issue. For no other matter is the Federal Court mentioned as either an arbitral or interpretative authority by any party, and the mention of the Federal Court in the statement of the Cabinet Mission is also strictly confined to the single point indicated above.

FINANCE

There remains the group of questions on which the sharp difference of opinion revealed in the notes and memoranda was not definitively settled. Firstly, with regard to finance, the Muslim League position was that the method of providing the Union with finance should be left for the decision of the joint meeting of the two constitution-making bodies, "but in no event shall it be by means of taxation." The Congress, on the other hand, stated that "the Federal Union will have necessary powers to obtain for itself

the finances it requires for these subjects and the power to raise revenues in its own right." The Congress, it would appear, did not insist on using the term "taxation." The compromise wording adopted by the Cabinet Mission does not even use the word revenue. It uses the term "finances," but couples it with the powers to raise them which are demanded by the Congress. In the event, the matter is left ill-defined, and will undoubtedly become a centre of considerable controversy in any Constituent Assembly which takes up its consideration. The severe limitations on financial powers arising out of any interpretation of the phrasing of the statement have already been discussed above.

ISSUES UNSETTLED

On another matter which is more important and which is even more controversial, the Cabinet Mission, perhaps wisely, refrained from saying anything. This is, in some senses, the most crucial matter of all. The Cabinet Mission's proposals merely provide for the setting up of a Union legislature and executive, but contain nothing regarding the structure of that legislature and executive. How the power between the two communities will be divided in the Union constitution is a matter on which the Cabinet Mission is entirely silent. It is obvious, however, that this is and will always be the main bone of contention. All the major differences of opinion between Hindu and Muslim bodies have related to sharing the power and the offices in government. The mere provision that there shall be a joint government cannot solve this issue. The large differences between the Congress and the League positions are sharply outlined by the statements made by the two parties. The Muslim League memorandum states that "there should be a parity of representation between the two groups of provinces [i. e. the Muslim Provinces and the Hindu Provinces] in the Union executive and legislature, if any." The Congress, in its note, states equally categorically, "We are entirely opposed to parity of representation as between Groups of Provinces in the Union executive or Union legislature."

No reference is made in either of these notes or memoranda, or in the statement of the Cabinet Mission, to the other major subjects of difference, such as the proportions of the two communities in the various services, especially defence services, or the method of election, whether by joint or separate electorates, etc. It is clear from this

that all that the Cabinet Mission did (and all it must fairly be said that, in the circumstances, it could humanly do) was to close the immediate gap relating to the single question as to whether there shall or shall not be an Indian Union. Almost everything else which would be a matter of major controversy, even after some sort of Union was agreed upon, the Cabinet Mission did not and could not, unless it was prepared to give a detailed award, decide. While it is possible to understand the position of the Cabinet Mission and to appreciate why it did not go into further detail, it is necessary to realise the nature of the task left, in the event, before any Constituent Assembly.

VIII. TASK BEFORE THE CONSTITUENT ASSEMBLY

SCOPE OF TASK

The task before the Constituent Assembly is manifold. The main divisions of that task are, (i) the determination of the relation of the future Indian Union with the British Empire, and (ii) the formation of the constitution of the Union. The chief problems in regard to (ii) are (a) the incorporation of the Indian States into the Union, and (b) the resolution of the conflict between the major communities. The questions to be settled between the Indians and the British relate to adequate provision for the protection of the minorities in the Indian constitution, and to the treaty "between the Union Constituent Assembly and the U. K. to provide for certain matters arising out of the transfer of power." In regard to the first, the British, as a result of their existing and past position, assume a responsibility and a right similar to those of a Peace Conference, such as the Versailles Conference, at the time of the creation of new nations. The Constituent Assembly will have to deal with the problem of minorities apart from the interest of the British, and it is unlikely that the declaration by the British of their particular interest in the problem of minority safeguards will make it more intractable. The problems arising out of the transfer of power may be exemplified by reference to the matters that are being negotiated under the Anglo-Egyptian treaty settlement. It is impossible to say today how difficult a similar settlement between Indians and the British will prove to be. The problems of the treaty will be, chronologically, among the last problems that the Constituent Assembly will be called upon to tackle, and they have little integral relation with problems of the structure of the Indian Constitution.

CONGRESS ATTITUDE TOWARD GROUPING

We are concerned chiefly with the internal task of constitution-making. Both aspects of this internal task bristle with difficulties. Immediately it is the problem of the differences between communities on which the Assembly seems most likely to founder. In judging of the ability of the Constituent Assembly to deal with these difficulties, some attention should be paid to the controversy relating to the formation of Groups. For, the course of that controversy reveals the forces which are likely to dominate other disputes also. Few people doubted the plain meaning and avowed intention of the statement of 16th May, relating to the formation of Groups. Within ten days of the issue of the original statement the Cabinet Mission put forward an explanatory note which did not leave anything to conjecture. From the beginning of its acceptance of the statement the Congress, however, insisted on interpreting the Grouping provisions as subject to the initial right of the Provinces to choose or not to choose to join the Group. The only modification introduced by the Congress in this original stand regarding the right of Provinces was that made by the resolution of the Working Committee (August 1946), to refer the matter of interpretation to the Federal Court. It has been already pointed out that there is nothing to warrant such a reference to the Federal Court in the statement of 16th May. It has been held likely that the Federal Court might have refused to interpret the statement. There is little doubt that if an interpretation had been attempted, the clearly announced intention of the Delegation itself would have prevailed. The Muslim League had, from the beginning, refused to run the hazard of judicial interpretation, and had declared that so long as the Congress did not accept the clear finding of the Delegation in this matter, it could not be held to have accepted the long-term plan of constitutional settlement. The reluctance of the Muslim League to be placed in this fundamental matter in the position of a speculative litigant, trying his luck at law, can be appreciated. What is not equally clear is why the Congress should have been led in this matter to adopt so obviously devious and ultimately futile a course.

The Congress had retreated from a great many of its most treasured positions in attempting to maintain the Union. The strength of the Central government, for example, had been seriously reduced, and the Congress had accepted this diminution of authority of the Centre in spite of all protests to the contrary in the past.

This concession to Muslim demands was in line with earlier concessions in the same direction. The statement of the Cabinet Mission, however, contained an important new element to which Congress had never given recognition before. In the words of Lord Pethick-Lawrence, the statement was built on a "basis which makes it possible for the Muslims to secure the advantages of Pakistan without incurring the dangers inherent in the division of India."²⁵ The claim of the Muslims to secure for themselves the advantages of Pakistan had never yet been agreed to by the Congress, and the first struggle came over the Grouping provisions because they were the means of bringing this Pakistan into existence.

APPREHENSIONS OF NON-MUSLIMS

The sphere of that Pakistan was to be the sphere, as the Muslim League always claimed to define it, the area of six Provinces. If the Pakistan Group within the Indian Union had been a clearly marked group in which non-Muslim interests had not been mixed up, it is likely that controversies would not have arisen over the provisions of Grouping; but the Pakistan Group contained three different types of interest to which the Congress had to pay close attention. In the first instance, the Group claimed to contain Assam in which the Muslims were in a minority and were certainly not the dominant community. It contained also the N. W. Frontier Province which, though overwhelmingly Muslim in composition, was temporarily within the Congress fold by political allegiance. Lastly, it contained within itself the whole of the Sikh community, which had been treated as one of the three major communities of India in the statement of the Cabinet Mission itself. If Pakistan meant dominant Muslim rule, rule swayed by Muslim interests and Muslim ideologies (and the demand had no meaning except in relation to such a concept), the position of all these was definitely precarious. Especially, the incorporation of Assam and the Sikhs into Pakistan could be genuinely feared to mean as much of a loss of individuality, of traditions and of culture, as the apprehended loss on the part of Muslims in an India dominated by Hindus. Congress acquiescence in the statement of 16th May could not, therefore, it was felt, be allowed to extend to an acquiescence in such a fate for the Assamese and the Sikhs; or rather, the direct incidence of this sacrifice on definite organisational groups within its own ranks made the

²⁵ Lord Pethick-Lawrence's Broadcast on 16th May, 1946.

grant of the concession much more difficult than it would otherwise have been for the Congress.

In this, as in all other matters, the choice was the same. It was a choice between acquiescing in the creation of a separate Muslim Federation, or making concessions in order to attain unity at all costs. Since August 1945, the Congress had evidently become committed, or the leaders of the Congress had swerved round, to the idea of the maintenance of unity at all costs. The ultimate grant of effective parity to Muslim representatives with Caste Hindus in the Interim Government and the acceptance of an "agency" centre for the Union, all indicated that the Congress leadership was prepared to go all the way for even a formal maintenance of Indian unity. In this matter, however, the grant of concession affected particular small groups intensively. This was not a sacrifice on the part of Caste Hindus or the dominant Hindu Provinces as a whole, about which nobody, in particular, was excessively concerned. In this matter the Assamese and the Sikhs organised themselves and took action from the outset. And Congress leadership, not having made up its mind definitely and not being completely united, the organisation and action received considerable impetus.

POSITION OF SIKHS

In this connection, an interesting development was the consolidation of the Sikh ranks and the establishment of the claim that the Sikhs shall express themselves through only their own political organisation. This development was surprising, specially in view of the persistent claim of the Congress to speak for all communities. The organization among Sikhs has become well-knit, and today the Panthik Board alone claims to speak on behalf of all Sikhs, whatever their particular political complexion. Sikhs within Congress ranks may thus be said to owe a dual allegiance, the allegiance to the Panthik Board, counting as superior in all matters relating to Sikhs' interests.²⁶ The position, it may be noted, has been completely acquiesced in by the Congress. It is a curious commentary on the evolution of the Indian political scene that an organisation claiming to represent all communities should, at this day, have been forced to recognise the claims of the communal

²⁶ This fact was strikingly brought out in the action of the Sikh members of the Panjab Legislative Assembly belonging to the Congress in the election of Sikh representatives to the Constituent Assembly.

organisation of the only major community, other than Hindus, whose members are within its fold in large numbers.

There is a major difference between the positions of the Sikhs and the Assamese. The Assamese opposed entry into Group C from the very beginning. They insisted that they could not be made parts of a dominantly Muslim Section against their wish. The Sikhs, on the other hand, having no independent province, were not against participating in the deliberations of the Section. In their opinion the Cabinet Mission have, by their recommendations, liquidated the position of the Sikhs, and their demands are twofold. Firstly, that a provision similar to that made for the protection of Hindus and Muslims in regard to major communal issues, should be made "for the protection of the rights and interests of the Sikhs in the Union or the provincial sphere."²⁷ Secondly, the reference to the liquidation of their position by the Cabinet Mission is obviously a reference to the adoption of representation in proportion to population and the Sikh demand, by implication, seems to be for a restoration of weightage. The Sikhs, in the beginning, categorically rejected the recommendations of the Cabinet Mission and refused to elect their representatives to the Constituent Assembly. Later, presumably on certain assurances being given by Congress leaders, the Sikhs consented to join the Constituent Assembly.

POSITION OF ASSAMESE

The position of Assam needs to be appreciated from another angle. The strength of the communities in Assam, as revealed by the 1941 Census, was as follows: Muslims 33.7 per cent, Tribes 24.4 per cent and Hindus 41.3 per cent, of whom 6.6 per cent of the total belonged to the Scheduled Castes. Under the 1935 arrangements, the Aborigines have everywhere obtained representation much less than their strength in the population. In the present legislature of Assam, the percentage of members representing the general constituencies forms more than 50 per cent of the total of general and communal seats, and the representatives of the tribal people are less than 10 per cent.²⁸ The total general vote, which is broadly a Hindu vote, has a strength of more than half of the Legislative Assembly. It is expected, or feared, that, in the future,

²⁷ Resolution of Sikh Panthic Conference, 10th June, 1946.

²⁸ See Table at the end of Section.

representation will everywhere be made more equally proportional to numbers in the population. Also it might well happen in Groups B and C that communities like the Scheduled Castes and the Tribal peoples will obtain representation through separate electorates. In this event the balance of power in Assam will very materially alter. The Caste Hindus will not command more than 35 per cent of the seats in the Assembly, and the Muslims will have little over 33 per cent; the Aborigines and the Scheduled Castes, who will together have about 30 per cent of the representation, will then be in a position to hold the balance between the two communities. In the matter of opting out of Group C, the present Hindu block in Assam will not be sure of being able to carry the day unaided. The anxiety of this block to abstain from joining Bengal in forming Group C can, therefore, be well understood. They would rather keep away now than take the risk of working for opting out in the new legislature with its very much changed composition.

CONGRESS STRENGTH IN FRONTIER PROVINCE

The concern over the compulsory participation of the N. W. Frontier Province in Group B springs from a source widely different from that responsible for the trouble over Assam and the Sikhs. The concern, in this case, is not over the position of a community or a Province, but that of a political party. The Congress wields political power in this Province today. But it cannot feel very secure about the future. The existing weightage in favour of non-Muslims in this Province is an important contributory factor towards the retention of power by the Congress. The Muslims formed 91.8 per cent of the population in 1941 but have only 75 per cent of the total of general and communal seats. A party which has the support of a substantial minority of Muslims may hold power in the Province with the full support of non-Muslims as long as weightage persists. If, however, weightage is withdrawn, the position will be radically altered. In that event, any party which has a working majority in Muslim representation will also control government. In the elections to the Provincial Assembly in 1946, the Muslim League obtained a slightly larger number of total votes cast by Muslims than the Congress. If allowance is made for even a small further increase in the hold of the League over the Muslim voters, the balance of power is bound to change after the new elections on the assumption that weightage will then be abolished. There is little likelihood that the legislature

of the N. W. F. Province under the new constitution will elect to come out of the Group, if a Group government is decided upon at this stage by the majority of Section B. This is why the Congress would have liked to vest the power to join a Group or to refuse to join it either in the Provincial Legislature as at present constituted or its representatives in the Constituent Assembly.

NEED FOR NEGOTIATED AGREEMENT

The controversies regarding grouping and the somewhat curious attitude taken by the Congress relating to Groups must be taken to reflect the complexity of the fundamental problem. The inwardness of the controversies over grouping resides in the question of the balance of communal power in various regions of India. The task before the Constituent Assembly is one of producing an enduring structure from out of these differing elements, and of allaying apprehensions which seem universal. For the question as to whether the Constituent Assembly is capable of dealing with this problem, should be really substituted the question as to whether the Constituent Assembly, at the present state of the political debate, should be allowed to tackle them. The Indian Constituent Assembly is a very large body; and a large body of this type cannot usefully function in the absence of a broad agreement on fundamentals. In view of the provision for double majorities, very little progress can be made in the present Constituent Assembly without arriving at an understanding on the main issues between the two major communities. The statement of the Cabinet Mission has suggested that a negotiating committee be set up on behalf of the Indian States in order to determine by consultation, presumably, with the Constituent Assembly the method of selection of the representatives of the Indian States, and also, perhaps, to negotiate regarding the "precise form which their co-operation will take." It is obviously necessary that the outstanding differences between the major communities should also be initially settled through negotiating committees set up either in a formal or an informal manner. Without this device the conduct of the proceedings in the Constituent Assembly may lead to a further worsening of the relations between communities, and to an inevitable break-down.

INDIAN STATES' REPRESENTATIVES IN CONSTITUENT ASSEMBLY

A postponement of the detailed work of the Constituent Assembly, at this stage, is indicated also by the need of including, at

an early stage, the representatives of the Indian States into it, and of ensuring their participation in Sections. It is highly desirable that the Indian States should form, for the major part, component parts with Provinces of larger federating units, and that they should also be associated with the formation of Groups. For this purpose it is necessary that the representatives of the Indian States should participate not only in the main Constituent Assembly, but also in its Sections, and that they should take part in the work of framing the Group and the Provincial constitutions.²⁹

It is only when the outline of the settlement with the Indian States and that between the communities is clear that any progress can be made in the Constituent Assembly as such. Whether, therefore, the Constituent Assembly will be successful or not in its task depends on whether these two problems can be initially solved. It would appear that the problem of the Indian States is much the less difficult. If the major communities in India arrive at an agreed solution of their differences, the rulers of the Indian States would not be able to oppose any reasonable settlement of the problem of the Indian States. The real obstacle in the path is the differences between the communities. The answer to the question whether the Constituent Assembly can complete the task before it, depends ultimately on the answer to the question whether a broad-based and genuine understanding between the Hindus and Muslims can be arrived at in the immediate future.

The following table sets out the details regarding the positions of various communities in the Provinces of Groups B and C discussed above, and specially brings out the changes brought about if weightage is abolished in these Groups.

²⁹ It is true that the Statement of 16th May does not contemplate the participation of representatives of Indian States in Sections. There would, however, be no objection to bringing this about provided that the Indian States and the two major communities agree. For a cogent plea in favour of associating representatives of Indian States with the work of the Constituent Assembly at all stages, see D. V. Gundappa: *The Constituent Assembly and States*, 1946.

TABLE NO. 1

Percentage of members of different communities in Total Population (1941 census) compared with the percentage of Seats in Provincial Assemblies in General (Communal) constituencies (Government of India Act 1935) in the Provinces of Group B and Group C.

Province		General	Total Hindus	Scheduled Castes	Tribals	Muslims	Sikhs	Indian Christians	Anglo-Indians	Europeans
Section B										
Panjab	Percentage of Population	27.93	27.80	5.60	—	57.10	13.20	1.70	0.02	0.03
	Percentage of Seats	26.10	—	4.97	—	52.20	19.30	1.24	0.62	0.62
N. W. F. P.	Percentage of Population	5.90	5.90	—	—	91.80	1.91	0.18	0.03	0.15
	Percentage of Seats	18.80	—	—	—	75.00	6.20	—	—	—
Sind	Percentage of Population	27.32	27.10	4.20	0.80	70.80	0.63	0.29	0.07	0.09
	Percentage of Seats	33.90	—	—	—	62.30	—	—	—	3.78
Section C										
Bengal	Percentage of Population	41.90	41.60	12.20	3.10	54.70	0.03	0.18	0.05	0.04
	Percentage of Seats	37.00	—	14.20	—	55.50	—	0.95	1.42	5.22
Assam	Percentage of Population	41.47	41.30	6.60	24.40	33.70	0.03	0.37	0.01	0.02
	Percentage of Seats	51.10	—	7.60	9.80	37.00	—	1.09	—	1.00

IX. HINDU AND MUSLIM POINTS OF VIEW

CONTINUITY IN MUSLIM VIEW AND POLICY

The prospects of a Hindu-Muslim understanding depend on the extent to which the points of view of the two communities are capable of being reconciled. For an estimation of these possibilities it is necessary first to know what these points of view are. For a correct estimation it is not sufficient to ascertain the carefully formulated demands, for purposes of public pronouncement, made by the leaders of the two parties. For this purpose it is necessary, if possible, to estimate the extent to which any community values an understanding with others, the extent to which it would be prepared to go in order to attain that understanding, the particular ends which it specially values and the direction and the manner of concessions it might, at an extremity, be prepared to make. The difficulty of such estimation is large when the composition of a community is heterogeneous and there is little in the way of unified leadership. In the case of the Muslims, these difficulties are much less than in that of the Hindus. The Muslims are a closely knit community, and also the minority community. It has so far been possible for Muslim leaders to concentrate on the specific interests of the community rather than devote their attention to the framing of a general programme for the whole nation. The Muslims also have a strong and continuous tradition of realistic leadership, which has served

them well to this day. It is possible to discern how, since the days of Sir Syed Ahmed Khan, Muslim political leadership has kept a more or less common objective before it, and continued to pursue it steadfastly. This is to be seen in the comparatively small difference in the statements of the concrete objectives made by those among Muslims who, presumably, differ widely from each other. An important part of Maulana Mohamed Ali's address as President of the Session of the Indian National Congress held at Coconada (1923) was devoted to a justification of the life and work of Sir Syed Ahmed Khan. On the eve of the Round Table Conferences, a remarkable degree of agreement had been reached among Muslim leaders in the concrete formulation of their demands. Similarly, in recent years, Nationalist Muslims have agreed on the need for complete autonomy for the Muslim provinces, and by implication agreed to the desirability of a very weak centre, and during the negotiations with the Cabinet Delegation, a section of Nationalist Muslims were reported to have endorsed the plea for a parity of Muslim representation with Hindus in the Central Government.

MUSLIM APPREHENSIONS AND MUSLIM GOAL

The Muslims have been constantly guided by one urge and one concern. Sir Syed Ahmed Khan felt it necessary to organise Muslims lest the Hindus who were more advanced in Western education and much more numerous should swamp them. The same point of view is found expressed very clearly in a letter by Sir Fazl-i-Hussain, written to a member of the Muslim Delegation to the Round Table Conference. Sir Fazl-i-Hussain writes:

"Now, what is it that the Labour Government offer? We give you responsibility at the Centre if you settle your communal disputes. Now, who will benefit more by responsibility being introduced at the Centre at this stage, Hindus or Muslims? Undoubtedly, the Hindus. Therefore, who should be anxious to settle communal differences in order to secure the promised gain? Naturally, the Hindus. Then why should Muslims, who are politically, educationally and economically weaker in the country, pretend that by ousting the British power from India and by introducing responsibility they stand to gain so much that, for it, they are prepared to sacrifice communal interests? The position has only to be visualized in a fair, judicial and commonsense way to notice the absurdity of it."³⁰

³⁰ Azim Hussain: *Fazl-i-Hussain, a Political Biography*, 1946, pp. 255-256.

MUSLIM OBJECTIVES

Undoubtedly the view persists to this day and colours the pronouncements and actions of Muslim leadership. It is a view which must command attention. Indeed, it is the point of view of all those who find themselves backward in any circumstances, and must receive due allowance from those who, for the time being, may in any way be more advanced.

Not only has the point of view of the Muslims been consistent, their leaders have also evidently been able to look; at each stage, a good distance ahead and to chalk out a concrete policy. The following is from a letter written by H. H. the Aga Khan to Sir Fazl-i-Hussain on the eve of the introduction of the reforms of 1935.

"What should be the future policy of the Muslims of India? We are in India in a minority (not even one-fourth of the population), and for all time we have to live in India and for all time we have the Hindu majority by our side. This position would indeed have been an extremely difficult one if the Muslims were 25 per cent all over the country, and Hindus everywhere in a majority. But as things are, fortunately it is not so bad, for in one part, however small, we are a positive majority, a frontier province touching independent Muslim States, and another touching the sea. Again, in Bengal, which is a frontier maritime province, we have a majority. . . . These being the circumstances, what are we to do? To this there is only one answer: that we should take advantage of our position in the north, and in Bengal, and get all the natural advantages we can out of it. First, in all-India affairs we should be out-and-out federalists, using all our influence so that our provinces get at least such autonomy as the great Indian Princes will enjoy under the Federation. Secondly, gradually by changing the character of the Army from a professional force to a territorial one and having for each province the kind of advantage that Bavaria had in the old German Empire (which great Princes will have in the new Indian Federation), by using all our strength for this legitimate end make India what she really is, that is, a United States of Southern Asia rather than something on the model of present-day Italy or Germany. Thirdly, internally we must strengthen our numbers by child welfare, by hygienic home life, by intensive education and by the upkeep of our national individuality as Indians within India. There must be keenest religious and secular education, and we must

open our arms as wide as possible to adopt members of the depressed classes. All this will need money, and we are economically weaker than our neighbours. Here is the crux of our policy. How are these things to be carried out? In self-interest, if for no other reason, our attitude should be hardest possible political work on the lines of moderate State socialism, a policy that will get for us the sympathy of many depressed and poor Hindus, as well as being in touch with the world movement—even in such reactionary countries as Germany and Italy. Our members in all the provinces (and especially in Bengal) should always be on the side of putting as many taxation burdens as possible on the upper and middle classes, and reducing as much as they can indirect taxes, which fall generally on the poor. This being the case, we have to start a real Economic Party with a semi-Socialist programme throughout each province, and a purely Federalist programme for the Centre.”³¹

SIGNIFICANCE OF LAST DECADE

The letter is remarkable as containing in brief compass a lucid exposition of the fundamentals of Muslim politics in India. It is clear from it that long before 1935 there was complete realization on the part of Muslim leadership of their peculiar circumstances, and a general agreement on the main lines of appropriate policy. It is also evident that the present situation is the natural outcome of a pursuit of fundamental Muslim objectives on lines laid down in the Aga Khan's letter.

In judging of the strength of the Muslim position today and the tenacity with which the Muslims are likely to hold their point of view, some attention must also be paid to the events of the last decade. One of the most important factors making for a consolidation of Muslim ranks and the strengthening of the Muslim League in recent years, was obviously the manner in which provincial autonomy was worked by the Congress under the Act of 1935. The Muslims in the various provinces were then not unified, and were obviously not in favour of centralised action. There was no single leader amongst them who had the position or the prestige necessary to bring together all elements, and Muslim interests in all the provinces were also not thought to require identical action.

³¹ Azim Hussain, *op. cit.*, pp. 301-302.

PANJAB IN 1936

The position is best illustrated with reference to the Panjab. In this Province, Muslim leadership had been more unified and its direction more intelligent than in any other since 1920. Sir Fazl-i-Hussain, who was the acknowledged supreme leader and who had returned to the Panjab on the eve of the new elections, was definitely opposed to the idea of a Central Parliamentary Board of the Muslim League running elections in all the provinces. It is instructive to note the reasons put down by Sir Fazl-i-Hussain for his opposition to the activities of the Central Parliamentary Board.

"(1) Provincial Autonomy means decentralization and, therefore, it is wrong to centralize provincial elections.

"(2) Conditions in each province vary to a very large extent, especially in majority as compared to minority provinces, and it is impossible to have a uniform principle applying to all.

"(3) In many provinces Muslims may find it necessary to have non-communal organizations, and in that case a Central Muslim agency to conduct Muslim provincial elections would obviously be out of the question. Ordinarily such would be the case in all the Muslim majority provinces. In the case of a province like N. W. F. P., it is foolish to conduct elections centrally.

"(4) The initiative and elasticity needed for such a purpose for each province should not be sacrificed for the sake of an All-India leader's aspirations.

"(5) In the case of the Panjab, the Muslim majority in the Provincial Assembly is nominal, and it is almost impossible to secure a Muslim majority through a separate control of elections. In the case of the N. W. F. P., it is possible, even probable, that the majority would lose in efficiency and power if it is not permitted to set up a provincial organization of a non-communal nature. What applies to the Panjab applies *mutatis mutandis* to Sind, and to a lesser extent to Bengal."²²

Two points emerge clearly from this statement. In Sir Fazl-i-Hussain's opinion, the working of provincial autonomy was, in the first instance, inconsistent with close control from an All-India Central organisation. Secondly, as the balance of parties and the nature of political problems differed from province to province, it was

²² Azim Hussain, *op. cit.*, pp. 307-308.

highly desirable that political parties cutting across communal divisions should be formed in each province which would best meet local requirements. In the Panjab, the organisation built on these lines was successful under the leadership of Sir Fazl-i-Hussain and his successors in defying the authority of the Central Muslim League organisation for a very considerable time. The Panjab Muslims were, however, completely converted to the necessity of a strong All-India Muslim organisation in the elections in 1945, and failed to support the platform of the Unionist party.

CONGRESS POLICY—1937-39

In this transformation a great part was played by the lessons of the working of provincial autonomy in Congress provinces. From the beginning, the Congress Parliamentary Board and Working Committee exercised complete and detailed control over the working of the party in the provinces. In the matter of elections there was very close control, and in no province where there was a definite Congress majority was any coalition allowed to be formed. Not only was no coalition formed, but also no individual member belonging to any minority community was included in the Congress Cabinets unless he definitely accepted membership of the Congress organisation. Even in the matter of legislative programmes, considerable control was exercised by the central authority; so that provincial autonomy was modified, in practice, to a very large extent. The fact that a number of provinces were heterogeneous in their composition also made for the increase of authority of the central party organisation. In these heterogeneous provinces particularly, internal disputes and divisions were constantly in evidence, and the central organisation played its part and ruled by carefully balancing one force against another. This consolidation of power over the major part of India in the single political organisation whose central nucleus now became all-powerful, undoubtedly provided an object lesson to Muslims.

Muslims in none of the Congress provinces could hope to share in political government unless they became members of the Congress organisation themselves. The expectation and hope that independent action, according to the needs of local circumstances, would lead to proper coalitions or alliances and allow all communities and parties to share in political power, were completely dashed to the ground. Membership of the Congress was the one

"open sesame." This was, it was remembered, a continuation of the attitude taken up by Mr. Gandhi at the time of the Second Round-Table Conference.³³ In the circumstances, there were two courses open to the Muslims. Either to join the Congress or, in the alternative, to form as well-knit and all-embracing an organisation of the Muslims as the Congress was, in the main, of the Hindus.

MUSLIM DISILLUSIONMENT

It has been sometimes represented that the trend of events might have been different but for particular leadership. The author of the biography of Sir Fazl-i-Hussain, the valuable material from which has been freely drawn upon for this section, seems to imply that with a leadership like that of Sir Fazl-i-Hussain, the course of history in the Panjab and elsewhere might have been different. This appears highly unlikely. Even apart from Sir Fazl-i-Hussain's leadership, the circumstances in the Panjab were not favourable, in 1936, for the success of a centralised Muslim organisation. The centralised Muslim organisation gained no striking success in any Muslim Province at that time. In 1936 the Muslims exhibited, in election results a disinclination to organize themselves into a single All-India communal party.³⁴ Muslim provincial leaders in most provinces felt at this time that with the Communal Award of 1933 they had gained almost all they had demanded, and that further action on the All-India level was unnecessary. Muslims were only in a small minority in most provinces, and even in their majority provinces the communal balance was such that they could not safely disregard the other communities. Local Muslim leadership, therefore, everywhere sought to come to terms with Hindus on the provincial level. It found them organised not on a Provincial but on an All-India basis, and it found co-operation with their organisation impossible on any terms consistent with maintaining their separate identity. It needs to be emphasized that it was continuous experience of this sort in all the provinces that slowly led again to a centralisation of political Muslim activity, and to the great streng-

³³ "On the other hand, after the Gandhi-Irwin Pact, Gandhi met some representatives of the All-India Muslim Conference, but he refused to accept their demands unless they were supported by the Congress Muslims. He was bound, he said, not to listen to any community of which even a single member was in the Congress. He expressed willingness to surrender completely if the Muslims reach complete unanimity among themselves, the same attitude for which the Congress blamed the British Government."—Azim Hussain, *op. cit.*, p. 258.

³⁴ See Table at end of section.

thening of their All-India organisation. Careful study of this sequence of events reveals how the course of history was shaped more by almost inevitable reactions than by particular leadership.

PROGRESS TOWARDS PAKISTAN

In the same phenomenon must be sought the explanation of the emergence into practical politics of the idea of Pakistan. Would the Muslim regions or provinces be left to pursue their own particular policies? Would the Muslims obtain any share in the power at the centre? The Congress organisation had shown that Congress leaders and the Central Parliamentary Board would not hesitate to force their own ideas on even a reluctant Provincial Cabinet. This had been clear from the way in which prohibition had been introduced and "basic" education had become a faith overnight.⁵⁵ With large powers with the Centre, and especially with the power of financial inducement, apprehension might well be felt of the slow encroachment of the field of provincial administration by a determined party fully in control of the Central Government. Also, if more than fifty per cent of the Central legislature was under Congress control, and this was seen to be easily possible, only such Muslims as would join the Congress could hope, in the circumstances, to aspire to office. Thus, even at the Centre, the Muslims in Muslim organisations might find themselves left out in the cold. And once this situation had been created and had lasted for any length of time, the reality of the autonomy of Muslim provinces might rapidly diminish, and the chance of the Muslims outside the Congress ever holding office at the Centre, recede fast. The situation as it developed after 1937 gave colour to such fears, and the increasing support received by the idea of a separate Muslim federation can be explained only in their terms. Pakistan would then be only an extension of the ideas propounded in 1935 by the Aga Khan, an extension which was needed because it was felt that Muslim ends were unattainable in an Indian federation.

* At an Educational Conference held in Poona in July 1946, the author heard Mr. J. B. Kirpalani, then General Secretary of the Congress and now its President, soundly rating educational ministers of Congress Provinces because they had presumed to talk of their policies. The Congress Working Committee, Mr. Kirpalani told the ministers, had put them into office and policy making was, in the main, the affair of that Committee.

MUSLIM POINT OF VIEW

This survey of the Muslim point of view and of the recent history of their organisation emphasizes three points. Firstly, the Muslims are determined that their position in the future of Indian polity shall be most clearly defined before a transfer of power from British to Indian hands takes place, and they are not greatly concerned if, because of the difficulties of definition, there is delay in the transfer. Secondly, they are anxious to reduce to the barest the powers of the government of the common centre; and thirdly, they will endeavour by all means within their power to secure under fully autonomous and dominant Muslim rule the largest possible areas in the North-West and the East.

HINDU OBJECTIVES

It is not possible to describe in a similar manner the definitive Hindu point of view. The Hindus, in the first instance, being the majority community, are not solely or even chiefly concerned with formulating a set of demands for the Hindu community as such; their organisations must endeavour to define the general political objectives, and formulate a programme for the people and the state as a whole. Therefore, Hindu leaders are not as fully occupied as Muslim leaders with defining relations towards the other major community. Their policy relating to other communities is also apt to vary; for, their relations with Muslims and others are a part of the technique of the attaining of general political goals, as well as being a matter of definition and negotiation by themselves. Moreover, the Hindu peoples are fundamentally dissimilar to each other, and have varying political traditions. Political and social traditions of large sections of Hindus are heavily impregnated with the results of past Muslim rule. As a result, there is among these a concrete sense of living unity with the Muslims. A large number of Hindu regions do not, however, share in these traditions; in these regions Muslim influences never played, or have long ceased to play, a dominant part, or to them movements for the rebuilding of society on specific Hindu foundations have made a special appeal.

ATTITUDE OF HINDU MAHASABHA

The point of view of the latter may be said to be represented by the leaders of the Hindu Mahasabha. They seem to agree fun-

damentally with Muslim leadership, that the Hindu and Muslim ways of life are distinct from each other, and will continue to flow in separate channels. They are, therefore, against making such concessions in the matter of a common language, etc., which would help to keep up any appearance of the unity of the two. They are also against making political concessions of the type of weightage, etc. The slogan of the Hindu Mahasabha is the apparently democratic slogan of "one man, one vote," and equal political treatment for all. Logically, the Hindu Mahasabha and the Muslim League should be able to agree today on the principle of democratic rule and of self-determination of peoples. On the question of regional self-determination, however, the logical rigour of the Mahasabha leaders is found wanting, and its place is taken by the mystic cry of the integrity of India. The position would have been intelligible if the Mahasabha leaders had refused to give Muslims weightage or privilege in any matter, had challenged the Muslim claim to the six provinces, and had agreed to self-determination only in respect of those areas which could indubitably be proved as being inhabited by Muslim majorities. As it is, the Mahasabha leadership has not been very helpful. It has all along done no more than oppose any concessions made for arriving at a settlement with the Muslims. In a number of cases its opposition has been logical; but not having an alternative realistic programme, it has been unable to play an active part in the shaping of political events.

CONGRESS STAND

The Indian National Congress is the organisation which has always received the support of the bulk of the Hindu votes, and receives it today in an overwhelming degree. In dealing with Muslims, Congress leadership has been greatly handicapped because of its claims to an overall representative character. The Congress has not been able, in the circumstances, to frame offers clearly on behalf of the Hindus. It has not been able in any negotiation to take up a definitively Hindu stand. Confusion has thus arisen with respect to the Hindu point of view, and what might be interpreted as specific Hindu interests have never been properly looked to.

CONGRESS AND HINDU INTERESTS

A very instructive example of this was afforded by the disputes over the composition of the Interim Government since the Simla

Conference of 1945. In the Simla Conference of 1945 was first brought forward a new formula regarding parity. The parity was to be between the caste Hindus, that is, Hindus other than those of the Scheduled castes and the Muslims. And the caste Hindu representation was to be the representation nominated by the Congress. There was also to be another parity linked with this, that between the League and the Congress. At that time, owing to the state of war and other conditions then in existence, the Congress, it was said, was prepared to accept the caste Hindu and Muslim parity; but this acceptance was made subject to the inclusion of at least one non-Muslim League Muslim in the Muslim quota. Thus, while the caste Hindu and Muslim parity was conceded, a similar concession was not made in respect of the parity between the two political parties, the Congress and the League. The Simla Conference of 1945 broke down on the question of the inclusion of a non-Muslim League Muslim. At the time of the talks regarding the Interim Government in 1946, the position of the Muslim League had become much stronger than in 1945. The election to Provincial and Central Assemblies had shown an overwhelming support of Muslims to the League. Therefore, the plea for including a non-Muslim League Muslim in the Muslim quota could no longer be maintained; but the non-inclusion in the Interim Government of a nationalist Muslim was supposed to impugn the nationalist character of the Congress. During the negotiation in 1946, the Congress objected to both the caste Hindu Muslim parity and to the Congress League parity. It also fought for the right of nominating a Muslim, if it chose, within its own panel; and the final breakdown in June came over this last claim. When ultimately the Interim Government was formed, it was formed on the basis of 6 Congress and 5 Muslim League representatives. The Congress insisted upon and succeeded in the inclusion of a Muslim amongst its nominees, with the result that with one member representing the Scheduled castes, there remained in the Congress panel only 4 caste Hindus. If the Muslim League had nominated only Muslims in its panel, as in fact it was expected to do, the Hindu-Muslim representation in the Interim Government would have been 6 Muslims, 5 Hindus (and only 4 caste Hindus). As it was, the Muslim League included in its nominees a Scheduled caste Hindu from Bengal and this made the final position as: 5 Muslims, 4 caste Hindus, 2 Scheduled caste Hindus. From the strictly Hindu point of view there was thus a definite worsening of the position from that adopted even under stress of peculiar conditions in the Simla Conference of 1945. It

was thus possible to say that consideration of party prestige weighed more with Congress leadership than regard to Hindu interests.

DIFFICULTIES IN NEGOTIATION

The inability of the Congress to speak on behalf of the Hindus as a community has made the formation or the recognition of the specific Hindu point of view very difficult. The Hindu Mahasabha puts forward certain claims and views, but has no effective backing with which to press them. The Congress receives the overwhelming support of the Hindu voters, and yet these representatives, in the bulk, of the Hindu voters find it necessary to behave as if they represented no particular community. This was apparent at the time of the Communal Award of 1933, and has been apparent again in the formation of the Interim Government. The Hindu community receives little compensating advantage; for, the Muslim and other minorities do not look upon the attitude of the Congress as anything more than a pose; and no corresponding overall goodwill results because of the apparent disregard for specific Hindu interest. Moreover, the position leads to continuous difficulties in negotiations. Negotiations are always easy when the two parties formulate clearly their own particular point of view. When, however, one party makes the claim to an overall representation as against the specific representation of the other party, demands and offers are not framed in equally clear manner and the path of the negotiator is obscured.

CONFUSED SITUATION

It is today very difficult to say what the basis of a Hindu-Muslim understanding could be, because a generally accepted Hindu point of view is not discernible. At times it would appear that Congress leadership was acting under the influence of the Mahasabha ideology; but there are again clear deviations from it. The Congress leadership is, of course, composite in character, and Congress decisions are largely in the nature of compromises between different personalities and parties. As a result, whereas the course of Muslim leadership shows a comparatively steady point of view, being pursued by more or less the same methods and with the same avowed objectives over a long series of years, the Congress objectives in regard at least of the terms of Hindu-Muslim understanding appear ill-defined and fluctuating.

The Hindu point of view is thus not capable of being clearly formulated, and a genuine understanding between Hindus and Muslims appears today more remote than ever before. It might yet be possible to arrive at *ad hoc* solutions of individual problems, and evolve in this manner a workable political structure. The enquiry has, for the purpose, to be shifted from the general problem of a Hindu-Muslim understanding to the specific issues on which an agreement between the Congress and the League is necessary before a constitution can be framed for the Indian Union. The sketch of the Muslim point of view given above will prove helpful even for this latter enquiry. Similarly, the confusion revealed as regards the Hindu point of view throws light on the factors causing indecision and vacillation in the Congress. The Muslim leadership is determined and has well-defined objectives; it persistently works for them and in the alternative is able to block further progress. The Hindu leadership is amorphous, not sure of itself, not wanting to declare itself, but has also been impatient of delays in political progress, and, therefore, each time it has given in, or rather been made to give in, to strongly pressed Muslim demands. History has repeated itself within the last two years, so that if one is unable to speak in terms of a Hindu-Muslim understanding, one may, at least, hazard a guess relating to the possible outcome of the present differences of opinion between the Hindus and the Muslims, as exemplified in the relations between the two political parties, the Congress and the League.

X. LINES OF POSSIBLE AGREEMENT

LIMITATIONS ON CONSTITUENT ASSEMBLY'S WORK

Whether or not it would be technically correct to apply, in any case, the appellation "sovereign" to the Constituent Assembly, that body could do almost anything it likes as long as the majority of Hindu and Muslim members of it are agreed. In case, however, of a difference of opinion between representatives of the two major communities, the limitations on the action of a simple majority of the members of the Constituent Assembly are very considerable. The limitations fall under two heads. A simple majority cannot vary the provisions laid down as basic (para 15) by the Cabinet Mission. It cannot reach any decision on any major communal issue. For decisions of both these kinds a separate majority of members of each of the two major communities is required. In this lies

TABLE NO. 2

Numbers of members of the Congress and of the Muslim League elected to Provincial Assemblies in 1937 and in 1946.

Province	Total Seats		Congress Members			Muslim League Members		
	General	Reserved for Muslims	1937		Total	1937		Total
			General	Total		Muslim Seats	Total	
1. Madras	146	28	137	159	146	9	9	28
2. Bombay	115	29	75	85	113	17	18	29
3. United Provinces	140	64	125	134	140	26	26	53
4. Central Provinces and Berar	84	14	63	70	82	5	5	13
5. Bihar	93	39	84	92	90	—	—	33
6. Orissa	45	4	33	36	43	—	—	4
7. Panjab	42	84	15	15	36	1	1	73
8. Northwest Frontier Province	9	36	4	19	9	—	—	15
9. Sind	18	33	7	7	16	—	—	25
10. Bengal	78	117	46	52	71	35	39	110
11. Assam	47	34	33	33	47	10	10	31

the strength of the Muslim position, and it is bound to be exercised to the full. It is, in the circumstances, futile to expect any variations of the provisions of para 15, especially in regard to the Provinces, by the Constituent Assembly. More particularly, the slightest expansion of the powers of the Union will be resisted, and Muslims will cling tenaciously to the double communal majority in the Union legislature and the right to demand reconsideration of the terms of the constitution at the end of ten years.

MUSLIM APPROACH

On issues which have not been definitely settled, the Muslims will work through their vote on major communal issues. Though anxious to appear reasonable, they will evidently do nothing to avoid deadlocks. Indeed, they may be pleased if the Constituent Assembly is unable to function and the efforts of the Cabinet Mission are shown to have failed. Therefore, on all questions which fall within the compass of the term "major communal issue," any decision taken by the Constituent Assembly is likely to approximate more to the League point of view than to that of the Congress. The prospects of a settlement of these questions in the Assembly, therefore, depend on the gap between the two positions and the extent to which Congress leadership is able to continue to yield without inviting a revolt within its own ranks. The prospects may be illustrated by reference to some of the most outstanding issues. These are (i) Structure of the Union constitution and the division of power within it. (ii) Joint or separate electorates. (iii) The working of Sections and the formation of Groups.

STRUCTURE OF UNION LEGISLATURE

The Union originally envisaged by the Muslim League might, in the opinion of the League, have functioned even without a legislature. The Mission proposals make it necessary for the Union to have a legislature. What kind of legislature may it turn out to be? The ideas of Congress politicians seem to run on the lines of a bi-cameral legislature in accordance with the usual practice. There would be a lower house elected by direct popular suffrage from all over the country, and an upper house formed of representatives of Provinces and Indian States on the federal principle. The Muslim League would obviously consider a double-decked legislature utterly superfluous for the purposes of the Union. A point of con-

siderable practical importance in interpretation of the provisions of the statement arises in connection with this probable difference of opinion. Would such a difference of opinion be adjudged to involve a "major communal issue"? Perhaps not; the moment, however, the Constituent Assembly proceeded to discuss the composition of each house, the Muslims by demanding parity or any other concession on behalf of the community, could raise a major communal issue. Whether there shall be one or two houses of legislature may, by itself, not require a double majority to decide. The composition of any house of legislature could, however, not be determined without agreement between the two communities. In effect, therefore, the agreement between the communities would have to cover all the main features of the constitutional structure.

UNICAMERAL OR BICAMERAL

A bicameral legislature would have significance only if the two houses are formed, each on some distinct basis. The claim to parity or any considerable weightage, will make it difficult to find two such distinct bases and yet maintain the parity or weightage. Also, it is doubtful whether any function can be usefully performed by a directly elected popular house in a Union with such limited powers. Foreign Affairs and Defence are considered to be the special concern of representatives of constituent States as such in all federations. The U. S. A. Senate possesses special powers in this regard. Apart from these two, there remains only communications; and this subject could as adequately be dealt with by a house containing representatives of the constituent States as by representatives elected directly by the people. Apart from the probable demand by the League, there is thus good ground for holding that the Indian Union legislature need not have two chambers; and the single chamber of the Union legislature should represent not the people of the Union but the States composing it. The federal principle would require such an arrangement.

BASIS OF REPRESENTATION

In the legislature designed to represent States, the smaller States always get some weightage and the influence of the larger States is not kept proportionate to their population. The next likely difference of opinion between the Congress and the League will

arise over the details of the application of this federal principle to the composition of the Union legislature. The Congress would probably regard the individual Provinces and the Indian States as the proper basic units for this purpose; the League will insist that the basic unit should be the Group. Is the Union a federation primarily of all the Provinces and Indian States or a federation of the Hindu and Muslim Groups of such Provinces and Indian States? No reconciliation of such fundamentally opposed points of view is possible. One or the other will have to prevail.

There is an important practical consideration, unconnected with the principles at issue, which has some bearing on the problem. It has been repeatedly emphasized that the formation of new federating units is an important preliminary of proper constitution-making. Its need is specially great in India. The principles on which the formation of federating units proceeds are determined independently of the balance of Hindu and Muslim. Yet, if the representation in the Union legislature is based on the primary unit, a complication will be introduced in this initial step. The creation of new units is then likely to be viewed not in the light of its propriety in itself, but of its effect on the communal balance at the Centre. Consideration of the creation of new Provinces has been prejudiced, on this account, in the past. It is of great importance that the two separate issues may not be similarly mixed up now. One way to prevent this would be to shift the basis of representation in the Union legislature away from the primary units. This will be doubly necessary if the Indian States are treated as apart from the Provincial areas and are not incorporated with them in a series of composite federating units. In this event, the Indian States would have to be treated as a group for the purpose of allotting seats to them in the Union legislature. The distribution of the proportions between Provinces also would then be appropriately made in Groups.

PARITY OF REPRESENTATION

In case the Group basis is accepted for representation in the Union legislature, the next hurdle will be presented by the question of parity. The League demand in this matter was put on 12th May in a simple manner: "There should be parity of representation between the two Groups of Provinces in the Union Executive and the Legislature." This formulation took for granted the inclusion of all the six "Muslim" Provinces in one Pakistan Group. The statement

of the Mission divides them into two Groups. The appropriate form in which parity is considered in this changed context is that indicated in the "suggested points for agreement between the representatives of the Congress and the Muslim League," enclosed with the letter written by Lord Pethick-Lawrence on 8th May, 1946.²⁸ This runs as follows:

"The Legislature of the Union shall be composed of equal proportions from the Muslim-majority Provinces and from the Hindu-majority Provinces whether or not these or any of them have formed themselves into groups; together with representatives of the States."

The representation of the Indian States is left out of the calculation of parity. It does not matter, for our purpose, whether it is included or left out; because it has always been understood that the balance of representation attained between Hindu and Muslim representatives of the Provinces shall not be disturbed, either way, by the addition of the representatives of Indian States.

INTERPRETATION OF PARITY

Before considering the possibility of conceding parity, its detailed results may be first examined. The parity is, by definition, between regions and not between communities. The six "Muslim" Provinces have to be granted the same representation in the legislature as the rest of the "Hindu" Provinces. But all the Groups are mixed in communal composition, and Group representation will have to be itself distributed between the communities within the Group. On what principle will this distribution be made? Weightage can be given to minorities in calculating, for any Group, the share of the minorities in representation of the Group in the Union legislature. The Muslims are not likely to agree to this, as the least weightage to minorities upsets their precarious balance of power in the Muslim Provinces and Groups. Will it be claimed that weightage, on the contrary, be given to the majorities? that is, Muslims should have more than their proportionate share in representation to the Union legislature from Groups B and C, and similarly for Hindus in Group A. The step would be so palpably unjust to peoples like the Sikhs and the Assamese and the Muslims in Group A that its adoption could not be agreed to in any event. The only likely point of agreement is then the distribution of the Group quota

²⁸ *Op. cit.*, No. 11.

of representation to the Union legislature strictly in proportion to the population of the different communities within it. Elaborated in this manner the proposal would contain two provisions, (i) Parity of representation in the Union legislature for Provinces making up Group A in the Mission's Statement, with the Provinces of Groups B and C taken together, (ii) Distribution of the quota of representatives in each Group or set of Groups in proportion to the population of communities within it. For obtaining a complete picture of the distribution of representatives on this arrangement another assumption may also be made. This is that the representation of Groups B and C together will be divided between the two in relation to their population numbers. The table of representation of members of the Constituent Assembly given in the Mission's Statement, gives the proportions between populations of different Provinces, Groups and Communities. The following table is prepared with the help of these data on the basis of the set of assumptions indicated above.

TABLE NO. 3

Distribution of percentage of representation in Union Legislature among communities and Groups on the basis of Parity.

	General	Muslims	Sikhs	Total
Section A	44.65	5.35	—	50.00
Section B	4.29	10.48	1.90	16.67
Section C	16.19	17.14	—	33.33
Total	65.13	32.97	1.90	100.00

RESULTS OF GRANTING PARITY ON COMMUNAL BALANCE

The table illustrates the consequences of the grant of parity on the balance of power between the two communities at the Centre. It shows that a reasonable interpretation of the demand for parity between Groups will not bring about an increase in the representation of Muslims in the Union legislature over that provided for in the Federal legislature by the Government of India Act of 1935. Will the Muslim League demand a different interpretation of the parity formula when it discovers this result? We have ruled out as palpably unjust and unacceptable the obvious way of increasing Muslim representation under the parity formula, that of giving weightage to the majority community in the representation of Groups B and C. The only other way is through the distribution of Group representation among the Provinces. No injustice is involved in

suggesting that the total representation allotted to a Group or set of Groups be divided, not in strict proportion to population of the various units, but in a way to increase the representation of the smallest units. In fact, a distribution favouring the smallest units would accord with the federal principle. The adoption of weightage in favour of these units will not, however, result in increasing the representation of the Muslim community. The smallest units in Group A such as Orissa and the Central Provinces have the least proportions of Muslims. Therefore, weightage in their favour will increase the proportion of Hindus in the representation of Group A. The small units in Groups B and C are N. W. F. Provinces, Sind and Assam. Muslims are dominant in the first two, but non-Muslims are in a large majority in Assam. Weightage given to the smallest units in Group B will bring about an increase in the number of Muslim representatives, but the effect will be countered to a substantial extent by the similar weightage that will have to be given to Assam in Group C. In all, this method of adjusting the distribution of Group representation will not result in an increase in Muslim representation, though its adoption may be desirable in other ways.

The adoption of parity of representation between Groups B and C taken together and Group A will raise Muslim representation from about 27 per cent on the basis of population to about 33 per cent. It will not be possible to raise this proportion further by any acceptable variation or device on the basis of regional representation. The proposed parity between Groups is preferable in many ways to weightage given directly to a community. It adheres to the regional basis of political organisation and representation and, in itself, the parity accords with the federal principle if the Union is taken to be essentially a Union of Hindu Provinces with Muslim Provinces.

PARITY AND REGIONAL AND PROVINCIAL BALANCE

Another aspect of the results of the grant of parity must be considered before passing final judgment on the proposal. This is the distortion of the representation of different regions which follows upon the acceptance of parity. Before it is possible to exhibit the effects of the proposal on representation of the different Provinces, an assumption will have to be added to those already made above. It has been pointed out that Group representation may be divided either in proportion to population among the Provinces of a Group, or weightage may be given to the smallest units in the distribution.

Any assumption made regarding the extent and degree of weightage is bound to be arbitrary. Also it is our purpose to bring out the differentiations between the Provinces or regions in the different Groups. This would not be fully brought out if any scale of weighting was allowed for in the distribution of Group representation within the constituents of a Group. Table No. 4 attempts to assess the extent of the distortion. It assumes that the Union Legislature will consist of 200 members, 100 representing Group A and 100, Groups B and C together. The distribution of representation between communities and Provinces of Group A, on the one hand, and Groups B and C, on the other, is proportionate to population numbers within them. The table also gives, for purposes of comparison, the distribution of numbers in a house of 200 if, in the absence of the proposed parity, the division was made proportionate to population in India as a whole. The difference between the two sets of figures gives the measure of distortion.

TABLE NO. 4

Distribution of Seats among Provinces and Communities, on the basis of parity, in a Legislature of 200 members and percentages in Total Population of Population of Provinces and Communities.

Province	General		Muslim		Sikh		Total	
	Seats	Percentage of Population	Seats	Percentage of Population	Seats	Percentage of Population	Seats	Percentage of Population
Madras	24	15.48	2	1.33	—	—	26	16.81
Bombay	10	6.45	1	0.65	—	—	11	7.10
United Provinces	25	15.87	4	2.87	—	—	29	18.74
Bihar	17	10.77	3	1.61	—	—	20	12.38
Central Provinces & Berar	9	5.46	—	0.27	—	—	9	5.73
Orissa	5	2.92	—	0.05	—	—	5	2.97
Total Group A	90	56.95	10	6.77	—	—	100	63.72
Punjab	8	2.88	15	5.52	4	1.28	27	9.68
Northwest Frontier Province	—	0.08	3	0.95	—	—	3	1.03
Sind	1	0.45	3	1.09	—	—	4	1.54
Group B	9	3.41	21	7.57	4	1.28	34	12.26
Bengal	26	9.30	31	11.24	—	—	57	20.54
Assam	6	2.30	3	1.17	—	—	9	3.48
Total Group C	32	11.60	34	12.41	—	—	66	24.02
Total Group B & C	41	15.02	55	19.98	4	1.28	100	36.28
Total Group A, B, & C	131	71.97	65	26.75	4	1.28	200	100.00

Note: The measure of distortion, either way, will be found by doubling the percentage and comparing it with the number of seats.

The distribution brought about on the acceptance of parity between Groups differs widely from the distribution on the basis of population proportion for the whole country. This would not be objectionable by itself. A uniform increase in the proportionate

representation of the smaller units would be welcome. The parity proposal has, however, the result of giving disproportionate representation to units like Bengal and the Punjab, which are among the largest and the most powerful. On population proportions Bengal would obtain 41 seats and the Punjab 19 in a house of 200; on the parity basis these numbers are increased to 57 and 27 respectively. On the contrary, not only the bigger Provinces in Group A, but also the smallest ones get representation below their population proportion on the basis of parity. Thus Orissa and the Central Provinces would be entitled to 6 and 12 seats respectively in a house of 200 on the basis of population proportions. Because of the parity formula these get reduced to 5 to 9 respectively. It follows that not only the Muslims, but also the non-Muslims in Bengal and the Punjab, get very considerable weightage, and that the position of even the Muslims in Group A is artificially depressed. The effect of this general distortion will not be changed by a reconstitution of federating units. Whatever the adjustment within the Group, small units in Group A, like Kerala and Orissa, will be treated very unfairly as compared to small units in Groups B and C; and Bengal and the Punjab will, in any event, come to hold a dominant position in the Union Government. On the whole, the weakest resultant position will be that of units in Peninsular India. The Gangetic Madhyadesh, through weight of sheer numbers, will be important in spite of the effect of the parity formula. For Peninsular India, already weak because of smaller numbers, the effect of the parity formula will be disastrous.

The considerations put forth in the preceding paragraph are not necessarily decisive. Congress and the representatives of Group A may feel that in spite of this obvious distortion, the particular basis of parity was more acceptable than other possible alternatives. It has been pointed out that the Muslims would be against giving weightage to minorities, especially in Groups B and C, and that consequently the principle of weightage would most probably not be adopted anywhere in the constitution. The Congress also should welcome its disappearance. In this event, only some kind of regional weightage could give the desired extra strength to Muslims. The Punjab and Bengal being the two important Muslim regions, a regional balance between Hindus and Muslims inevitably means increasing a great deal the importance of these large regions. Whether a full parity is accepted or not, some concession in this direction seems inevitable if a Union constitution is to be raised by agreement.

UNION EXECUTIVE: SWISS MODEL.

The difficulties encountered in reconciling the points of view of the two major parties and communities in the formation of the Union legislature will be large. They will be larger still in respect of the executive of the Union. Here, again, the League demand is for parity; presumably, this also means regional parity and not communal parity. The real question is, In what manner will this parity be sought to be achieved? Will the parity of strength in the Union legislature, coupled with an initial understanding and the hope of the growth of proper conventions, be held adequate to fulfil Muslim demands? Or will any constitutional provisions be demanded? And if constitutional provisions are demanded, what could be their nature? The most obvious provision would be the election of the Union executive by the Union legislature by proportional representation on lines of the executive of the Swiss Union. The proposal has the support of Sir R. Coupland and of Sir Tej Bahadur Sapru personally (though not of the Sapru Committee). In the particular context, the proposal for the adoption of the Swiss system is less objectionable than it would be otherwise. The main objection to the Swiss system is that it would destroy the principle of Cabinet responsibility, make for complete departmentalization of the administration, and render the executive incapable of pursuing a strong and unified policy.²⁷ In the proposed Indian Union, all these defects of the executive may appear, irrespective of how the Cabinet is formed; and these defects will persist as long as there is no long-term settlement of the Hindu-Muslim problem.

²⁷ "The executive, in this system, would not feel bound to act on the principle of joint responsibility, nor would the cabinet as a whole or any minister have to resign on any vote, general or specific, of the legislature. The representatives of particular groups in the cabinet would have a guarantee of continuous tenure without reference to the feelings of the majority of the legislature. Therefore, these members of the executive would at no time be under the necessity of being either efficient or honest in the administration of their departments, or of actively co-operating with or of even maintaining a semblance of co-operation with their colleagues. As long as they kept their own particular group satisfied, their departments, for all practical purposes, could function as autonomous units, bearing no responsibility to any other part, legislative and executive, of the government."—*Federating India*, 1945, p. 54. This was how it was feared an Indian Executive would work if the Swiss system was adopted. It reads today almost like a description of how actually the Indian Interim Government at the Centre functions. A government of party or community representatives on a fixed quota basis will, in the Indian Union, work even worse than the Interim Government of today, as the co-ordinating and restraining influence of the Viceroy would then be absent.

POSSIBILITIES OF ENGLISH MODEL.

In case a genuine understanding between the League and the Congress is reached before the Constituent Assembly ends its labours, no constitutional provision regarding proportionate shares of seats in the Executive need be made. For the ordinary Cabinet system of the English model is capable of being adapted to the purpose of representation of a variety of interests. This has, in fact, happened in Canada. "The most notable characteristic of the Canadian Cabinet is the representative nature of its membership; the Cabinet has become to a unique degree the grand co-ordinating body for the divergent provincial, sectional, religious, racial, and other interests, throughout the Dominion."⁸⁸ And it has been emphasized that the conventions regarding provincial, religious, etc., representation in Canada are so strong that they are observed, whichever party comes into power, even at the sacrifice of party convenience or administrative efficiency.

DISADVANTAGES OF SWISS MODEL.

No restrictions relating to the specific representation of particular interests are placed today on the formation of cabinets in the Indian Provinces. The Muslim League would most probably desire to maintain, in future, a similar absence of restrictions on cabinet formation in the Provinces and Groups of, at least, the Pakistan area. It may, however, feel that specific guarantees for their interests being represented are required for the executive of the Union. In face of such insistence, provision will have to be made in the constitution for guaranteeing in some way the representative character of the cabinet. Today the Executive Council is made up by the Viceroy by personal selection. Personal selection of the cabinet by a supreme executive involves the adoption of the Presidential System. The duality in Indian politics rules out the possibility of the adoption of this system. The Swiss method of electing the executive by members of the legislature by a system of proportional representation may be a suitable way of meeting the difficulty. The adoption of the Swiss system will be the reflection of the existing distrust among the major communities, and its adoption will make for perpetuating arrangements based on the distrust.

⁸⁸R. M. Dawson: The Cabinet: Position and Personnel, *Canadian Journal of Economics and Political Science*, August 1946, p. 270.

Apart from its other disadvantages, the Swiss system will count heavily against minor Provinces and the smaller minorities. It has been pointed out that, under a flexible system as that in Canada, room can be and is made in a number of ways for a large variety of minor sections and interests.⁸⁹ In the Swiss system representation will go strictly in proportion to numbers in the legislature. In this way not only will the smaller Provinces, especially in Group A, never have a chance of being represented in the executive, but also the smaller religious minorities will not be provided for. Even the Sikhs, with a possible 2 per cent representation in the Union legislature, would have little chance of obtaining a seat in the Union cabinet. In the English model, the formation of the cabinet is essentially the work and responsibility of the Prime Minister. He makes his choice, knowing that he would have to justify the composition to his party and the public. The Swiss Executive is formed by an election. No person deliberately forms it or is liable to be held responsible for it. Therefore, all minorities which are not strong enough to get a share through the proportionate system will be neglected. Parties and sections will exert their strength to the utmost in the elections, and nobody will feel called upon to help specially the numerically negligible interests.

ALTERNATIVE REGARDING STRUCTURE OF EXECUTIVE

The choice of alternatives in the formation of the executive will thus not be easy. On the one hand, there is an elastic system capable of functioning efficiently and meeting all contingencies, given good sense and an exercise of restraint on the part of the majority party or community and the building up of sound conventions. On the other hand there is a system which will take nothing for granted, and which will give adequate representation to the Muslims, but which will lead almost necessarily to a neglect of the smaller minorities and regions, and which will perpetuate the system of a weak and divided executive. The final choice will depend on, and will necessarily represent, the state of feeling between parties.

PARITY IN SERVICES

The third important problem in relation to the Government of the Union would be that of guaranteed proportion to Muslims

⁸⁹ See article referred to above.

in the services of the Union. Muslims of all parties lay great store by such a provision, especially with regard to the Defence Services.⁴⁰ Today, administrative orders lay down proportions of recruitment by major communities for most services—Provincial and Imperial. The constitutions of neither the Provinces nor the Centre contain any provisions in this behalf. The composition of the services is ultimately defined by the policy of government. There is no reason why a specific constitutional provision regarding the services be demanded if an adequate share of governmental authority is acquired. Muslim demands in this regard will depend on their disposition and their expectation in other respects. If the Muslims are satisfied that they have sufficient strength in the legislature and that they will continue to wield, under the constitution, a fair share of executive power, they may not insist on constitutional provisions relating to communal recruitment to services. Otherwise, they will be keen on a constitutional guarantee.

CONSEQUENCES OF PARITY IN ARMED FORCES

The provision of a guarantee will raise difficulties because a parity is likely to be demanded. And a parity in this respect is likely to be framed in terms not of regions, but of communities. Such a demand will be more difficult to meet, and is more fraught with grave consequences for the future than the demand for regional parity in the legislature or the executive. The demand will stand on an entirely different footing from the usual safeguard for minorities, providing for a proportionate share of offices and of benefits of government expenditure. This demand will be for the creation or perpetuation of a privileged position, and in the context of defence services it raises a fundamental question. A demand for, say, a parity of recruitment to defence services for Muslims or Muslim regions is a demand, in the last analysis, for a moiety of the fundamental basis of power. On the supposition that the Indian Union is a Union of Hindu and Muslim provinces, it would have a theoretical justification. But its acceptance will raise, in a much acuter form than in the distribution of seats in the legislature, the problem of the balance of power as it affects the various Hindu Provinces. The British policy of recruitment to defence service, with its distinction between the so-called martial and non-martial races, has generated deep resentment among those Hindu peoples who have been dubbed non-martial. The ban against recruitment to the

⁴⁰ See *Federating India*, pp. 57, 58.

army, etc., is a discrimination which has both political and economic consequences. Certain regions like the Panjab and certain communities like the Sikhs have, as a result, enjoyed highly privileged positions. It is argued that their continuance under a democratic regime is entirely unjustified; and the demand for a speedy correction of older inequalities is bound soon to increase in insistence. The concession of parity in defence services, which will possibly be complicated by the special demands of the Sikhs, will guarantee a continuance of the present serious lack of balance in the composition of the defence services. The Provinces of Group A may reconcile themselves to a less than proportionate representation in the Union legislature and even in the Union executive. They may reflect that the Union has such limited powers in the essential matters of life that such concession in the cause of unity may well be made. The manner of recruitment to and the fixation of the composition of Defence Services are matters, however, of far graver import. Once these are fixed or determined in a certain way, the consequences of the step will be far more enduring and fundamental than those of the constitutional structure of the Union. Regions and communities whose representation is unduly depressed and whose influence is negligible, not only in the government of the Union but also in the armed forces of the country, will be reduced to a position of permanent political impotence. The Provinces of Group A, especially of the South, may well hesitate before accepting such a definition of their status. If, therefore, the Muslims insist on provisions in the constitution for the representation of their community or region in Union services, including the Defence Services, the demand may meet with much greater opposition than is likely to be encountered by their other proposals.

JOINT AND SEPARATE ELECTORATES

The next series of problems to which attention may be directed are those connected with methods of representation. These have assumed great importance in political negotiations and controversy in India. Some observations on the question of joint or separate electorates are specially called for in view of the prominence given to it by the Hindus and the Congress in the past, and the place of importance it occupies in the report of the Sapru Committee. It has been claimed in favour of joint electorates that they make for co-operation on the part of various communities in the working of political organisations, induce a sense of dependence on each other

among members of the different communities, and prevent the emergence of extreme sentiments on any side. Separate electorates, on the other hand, are supposed to foster and perpetuate a sense of separateness.

HINDU SOCIAL CONDITIONS

In a consideration of this question, the starting point, surely, is the normal conditions of social and communal life in the polity. It is from the state of this that the claim to separate political representation arises. The present structure of Hindu society does not lead or even allow members of it to live as members of a unified social organisation, with followers of other faiths such as Islam and Christianity. The members of the Scheduled Castes are, in the bulk, separated by formidable social barriers from the rest of the Hindus. These fundamental facts justify separate political representation of the various communities, and such representation is universally accepted as necessary. The Sikhs, who are closely allied to Hindus and can and do live in a fairly close communion with them, would not, today, consent to their separate representation being abolished. And nobody has, on that account, questioned the strength of national or patriotic feelings on their part. The demand for separate representation is thus no more than a reflection of social reality. This demand will not cease until the facts of social life are changed and there is no ground for believing that separate political representation will hinder desirable changes in social life being brought about.

AIM OF ELECTORAL DEVICES

Granted separate representation, should it be brought about through joint or separate electorates? Joint electorates, it is said, will allow two communities to influence mutually the choice of the representatives of each other. It may be pointed out, in the first instance, that considerations of the mutual influence of different sections of a community on each other does not figure largely in the theory of political representation. In Western Democracies all elections have aimed at securing in the legislature as faithful a reflection as possible of all sections and groups in the electorate. All elaboration of proportional representation has as its aim the representation of the smallest minority by its own accredited representatives. The objective is rather that of seeing that large sections do

not influence or swamp the representation of small sections, than of producing midway representatives mildly acceptable to all. The latter is not the aim of even those who are opposed to proportional representation. The British partiality for single-member constituencies arises from the desire to intensify the difference in representation between the majority and the minority party or parties. Whether under proportional representation or under single-member constituencies, the aim is either to reflect faithfully the differences in political opinion to the farthest extreme, or even to exaggerate them, but never artificially to conceal them.

JOINT ELECTORATES: THEORY AND PRACTICE

It might be argued that the case of the representation of communities differs essentially from that of the representation of political parties. With us, it is specially desirable to emphasize commonness rather than difference and joint electorates help to do this. This conception of joint electorates, however, reckons without the facts of practical politics, which are always dominated by parties. A joint electorate in which the strength of two or more communities is more or less evenly balanced and in which votes are cast on the merits of the persons or programmes of candidates, may lead, in a large number of instances, to success of candidates acceptable generally to all communities. The actual facts in India are as different as possible from this hypothetical picture. The communities are rarely balanced evenly in an electorate, and the merits of persons or programmes have little, if any, influence on the results of elections. The election has, in recent times, been practically won once the candidate has obtained nomination from the dominant party. In the circumstances, joint electorates would have little value. A well-organised party of a community which held, say, 60 per cent of the votes, would today capture every seat in single-member constituencies. If the constituencies are multi-member constituencies, only the sections or communities with the minimum necessary proportions of strength among voters would get represented, if properly organised. The actual issue would be little influenced by the existence or otherwise of joint electorates.

EXPERIENCE IN MAHARASHTRA

However, it is no longer necessary to talk in hypothetical terms regarding the working of joint electorates in India. Very consider-

able light has been thrown on the question by the elections of representatives of the Scheduled Castes in the elections of 1946. The elections in Maharashtra were the most instructive. It is generally agreed that the Mahars in Maharashtra have been completely organised by Dr. Ambedkar, and support him almost to a man. Among the Scheduled Caste voters, the Mahars in this region are by far the most dominant, and yet, in the elections through joint electorates, the candidates nominated by Dr. Ambedkar, that is, by the Scheduled Caste Federation, were not able to win a single seat. It was not claimed even by the Congress, whose Scheduled Caste nominees succeeded everywhere, that the elected representatives of the Scheduled Castes obtained a majority or even a fair proportion of the Scheduled Caste votes. The Congress Scheduled Caste candidates won the elections in spite of the almost solid backing of the Scheduled Caste voters themselves to candidates of the Scheduled Caste Federation. There were multi-member constituencies in this region, where one seat among four might be reserved for a Scheduled Caste representative. But unless the Scheduled Caste voters amounted to as many as a fourth of the total number of voters, their nominees had no chance of being elected even in the multi-member constituencies. And the Scheduled Castes are nowhere in such concentrated strength. The Congress candidates won because the Caste Hindu voters cast their votes in such a manner that the Congress candidate belonging to the Scheduled Castes won without having to look to the support of the Scheduled Castes. Congress leadership claimed, after the elections, that the results exhibited the strength of discipline among their ranks. The claim may be readily conceded; it may, however, be doubted whether it exhibited in an equally favourable light the political wisdom or the sense of fairness of the leadership of the Congress. At any rate, the elections have now made it unlikely that any intelligent community will willingly accept representation through joint electorates in any electorate where it is numerically weak.⁴¹

SPECIAL CIRCUMSTANCES OF SCHEDULED CASTE REPRESENTATION

The Scheduled Caste representatives in Maharashtra are today, in effect, representatives only of the Caste Hindus. The social and

⁴¹ The consequences of joint electorates from which Dr. Ambedkar and his party suffered, had been foreseen by the Sikhs and Hindus of the Panjab when they refused a Muslim offer, in the thirties, for an experimentation with joint electorates in that province. For an account of the negotiations see Azim Hussain, *op. cit.*, pp. 279-282.

political context of the representation of the Scheduled Caste has to be borne in mind to appreciate the full significance of this. Separate representation for the Scheduled Castes is necessary because these sections of the population are subject to the denial of even elementary rights at the hands of Caste Hindus. The depressed economic and social circumstances of these classes make it very difficult to find representatives capable and bold enough to fight for their cause. If, added to this, these representatives depend almost completely on the Caste Hindu vote for their election, the strength and the effectiveness of their action can be well judged.

CLAIM ON BEHALF OF SEPARATE ELECTORATES

Joint electorates in such a case are obviously not an instrument for the increase of accord and amity; they can only lead, as has happened actually, to augmenting bitterness and hatred. These elections have also given point to the oft-repeated Muslim claim that separate electorates are helpful in the maintenance of cordial relations among communities.⁴² As long, therefore, as conditions of social life justify specific representation of any community, it is best (especially if that community is numerically small compared to others) that its representation be not through joint electorates but through separate electorates.

DECISIONS IN SECTIONS

It is likely that the question of separate versus joint electorates may not emerge as a major problem in the Union Constituent As-

⁴² "If Hindus and Mussalmans remained just as divided as they had hitherto been since the commencement of British rule, and often hostile to one another, mixed electorates would have provided the best battle-ground for inter-communal strifes, and would have still further widened the gulf separating the two communities. Each candidate for election would have appealed to his own community for votes, and would have based his claims for preference on the intensity of his ill-will towards the rival community, however disguised this may have been under some such formula as 'the defence of his community's interests.' Bad as this would have been, the results of an election in which the two communities were not equally matched would have been even worse, for the community that failed to get its representative elected would have inevitably borne a yet deeper grudge against its successful rival. Divided as the two communities were, there was no chance for any political principles coming into prominence during the elections. The creation of separate electorates did a great deal to put a stop to this inter-communal warfare, though I am far from oblivious of the fact that when inter-communal jealousies are acute, the men that are more likely to be returned even from communal electorates are just those who are noted for their ill-will towards the rival community." Maulana Mohamed Ali, Presidential Address at the Cocomada Congress (1923). *Congress Presidential Addresses*, Second Series, 1911 to 1934, Natesan & Co., p. 622.

sembly. The constitutions of Provinces and Groups will be settled in the meetings of the three Sections. The Constituent Assembly, as a whole, would be left to settle the method of representation only for the Union legislature. If, as is likely, the Union legislature is composed of a single chamber which represents Provinces and Groups, the problem may be easy of solution. In this event, the Union legislature may be elected by methods similar to those adopted in the elections to the Constituent Assembly itself. The main debate in this regard will then take place in the meetings of Sections. However, the results in the Sections are easily predictable. The rule of double majority will not operate in the meetings of Sections; the complexion of the absolute majority will thus decide the issue. In Sections B and C it is likely that separate electorates will not only be retained for Muslims and Sikhs but will also be extended to Scheduled Castes and the Aborigines. In Section A, on the other hand, an attempt will be made to introduce joint electorates even for Muslims, and no heed is likely to be paid to even the legitimate complaints of the Scheduled Castes.

SOLUTION BY ADOPTION OF PROPORTIONAL REPRESENTATION

A number of difficulties inherent in this controversy may be avoided if some elaborate method of proportional representation is adopted. The adoption of proportional representation does away with the need to split up constituencies. Therefore, by its adoption, offence will not be given to those whose susceptibilities are hurt by any overt separation of communities or sections. On the other hand, under proportional representation, all minorities which are properly organised will be enabled to elect their own representatives. In this connection two features of the system of proportional representation adopted in Continental Europe, especially by the Weimar regime in Germany, are worthy of attention. Firstly, there was the provision for voting not for a person but for a party list, which was widely adopted in many continental countries. If voting for party lists is combined with large electoral districts, election would be guaranteed for all the important candidates that a party desires to get into the legislature. The other feature, peculiar to the German system, is the option offered to parties by the electoral law to associate the lists of two or three districts in a "Union" list. This device would prove specially useful for representation of dispersed minorities such as Scheduled Castes, Christians and Muslims in certain regions. With a permissible combination of votes of various

districts on behalf of a party, representation even of small and scattered minorities could be very fairly linked to their numbers, and the representation would be through persons who would be known to enjoy the confidence of the members of the community. There should be no objection to adopting such a system of proportional representation in India. The two usual charges levelled against the system, as it has worked on the Continent of Europe, are that (i) it leads to breaking up representation of the electorate in sections and (ii) that, in the particular system, it has meant voting for parties and not for persons. Neither of these objections need carry considerable weight with us. A faithful representation of the views of minority communities is an important desideratum with us. The sectionalisation will be proportioned to the numbers of these communities and its effect on the strength of the majority parties will not be considerable. As to voting for parties, we have been long used to it. Indeed a large number of leaders of both the Congress and the League have often claimed that they could get any persons whom they set up as candidates elected, and have successfully exhorted the electorate not to look to men but to the party label. An adoption of proportional representation on lines indicated above would achieve the abolition of separate electorates and avoid at the same time any injustice to minorities.

WORKING OF SECTIONS

The third important set of problems faced by the Constituent Assembly will be those connected with the working of Sections and the formation of Groups. The Statement of May 16, 1946, provides that "sections shall proceed to settle the provincial constitutions for the Provinces included in each section, and shall also decide whether any Group constitution shall be set up for those Provinces and if so with what provincial subjects the Group should deal." The phrasing does not give a clear direction in some respects. For example, while it is clearly laid down that the Section shall decide whether any Group constitution shall be set up, it is not equally clear that the constitution of the Group shall be settled by the Section. In fact, the specific reference only to subjects to be taken up in common may be interpreted to mean that the Section would immediately decide merely whether a Group constitution shall be set up and if so with what subjects the Group should deal; the more detailed work of setting up the Group constitutions would then have to be done by another agency later. There is, however, little ground for difference

of opinion regarding the settling of Provincial constitutions. These are to be settled by Sections; and as no provision has been made for a special majority or for majorities by communities, all differences of opinion in the Section will be settled by a simple majority. Therefore, the absolute simple majority in each Section will decide (i) Provincial constitutions, (ii) formation of a Group government and (iii) subjects to be taken in common by the Group government.

CHANGES IN ATTITUDE OF CONGRESS

It has been contended that these powers given to the simple majority in each section will result in the oppression of the minorities, especially the non-Muslim communities and provinces in Groups B and C. Originally, the Congress seemed to take the view that a Province could abstain from even joining a Section. This is clear from the resolution passed by the Assam Legislative Assembly (on the advice of the Congress High Command), asking its representatives not to join Sections or Groups. Later, as would appear from the broadcast of Pandit Nehru on the assumption of office, it was thought necessary to join meetings of Sections but not thought necessary to participate in the decision to form Groups. The original view⁴² was evidently taken without any reference to the work of settling Provincial constitutions. The change took place, perhaps, on the discovery that Provincial constitutions could not be settled without going into Sections. At this time no complaints were raised regarding the procedure or the majority required for settling Provincial constitutions; because, on the vital matter of participating in a Group government, it was still thought that the Provincial representatives had freedom of abstention. Now that the obvious interpretation of a Delegation's proposals has been reaffirmed and also accepted by the Congress, apprehensions are felt regarding Provincial constitutions. The Provincial constitution now becomes the all important fact. The efficacy of the opting out provision will itself depend on the structure of the new Provincial constitution.

FEARS OF CONGRESS

The fears entertained by the Congress are expressed in a letter written by Maulana Azad to the Secretary of State on 20th May;

⁴² "A Provincial Assembly may give a mandate to its representatives not to enter any Groups or a particular Group or Section." Letter from Maulana Azad to the Secretary of State, op. cit., p. 33.

1946: "As sections B and C have been formed, it is obvious that one province will play a dominating role in the Section, the Panjab in Section B and Bengal in Section C. It is conceivable that this dominating province may frame a provincial constitution entirely against the wishes of Sind or the N. W. Frontier Province or Assam. It may even conceivably lay down rules for elections and otherwise, thereby nullifying the provision for a province to opt out of a Group."⁴⁴ Two things are feared; one, that the whole Provincial constitution may be framed against the wishes of the Province and, secondly, that elections to the new Provincial legislatures may be so planned that the freedom to come out of the Group may be nullified in advance.

COMPETENCE OF SECTIONS: SETTLEMENT OF PROVINCIAL CONSTITUTIONS

Once it had been decided that the Union Constituent Assembly should have nothing to do with Provincial and Group constitutions, two alternatives were left relating to the framing of Provincial constitutions: (i) To frame them in the Sections or (ii) to leave their settlement to the representatives of each Province. The latter course involves an immense partitioning of the Constituent Assembly and would have, in some cases, left the preparation of a Provincial constitution to bodies of only three or four persons. The course actually adopted, settlement of the Provincial constitutions in the Sections, was highly preferable of the two. This does not yet mean that the Provincial constitution will be irrevocably drawn in the Section or that the Group will continue to dominate it.

PROVINGES, ULTIMATE ARBITERS OF PROVINCIAL CONSTITUTIONS

Fundamentally, the Province is the primary constitutional unit with all residuary powers; a set of Provinces may bring a Group government into being for the specific purpose of taking some subjects in common; the step does not alter the constitutional position of the Provinces or give the Group government any constitutionally superior status over the Provinces. The Group governments derive their powers from the Provinces and not the other way round. This is basic to the Delegation's scheme and nothing can be done in Sections which will alter this fundamental constitutional position. Even

⁴⁴ Ibid, p. 33.

initially, the Provincial constitutions are settled not by Groups but by the Provincial representatives meeting together in Sections. The Section will have no existence after the work of the Constituent Assembly is at an end. Therefore, the future of Provincial constitutions will rest not with any constitutional authority above the Province—Section, Group or Union—but with the Province itself. Whatever the nature of the provisions made initially for alteration or amendment of the Provincial constitution, the powers in this behalf can be given only to the legislature or the people of the Province itself.

ELECTIONS TO FIRST PROVINCIAL ASSEMBLY

In view of this, little fear need be entertained of the effects, in the long term, of the initial settlement of the Provincial constitution by the Section. The major provisions regarding all the Provincial constitutions framed in a Section will have to be similar. It is unlikely that the Panjab representatives, for example, will force on the N. W. F. Province provisions making the constitution of that Province almost unalterable while leaving the constitution of their own Province elastic. Such palpably unfair use of the majority will make the process of constitutional settlement by the Assembly procedure impossible, and the matter will then move on to an altogether different plane.

FRANCHISE

The real ground for apprehensions is, thus, the power of the Sections "to lay down rules for elections or otherwise" in connection with the first legislature to be formed immediately after the constitutional settlement. The whole matter turns on the provision for the composition of and elections to this first legislature, and might be considered under two major heads: (i) franchise and (ii) electorates and elections. Little difference of opinion need arise regarding the franchise. All parties are agreed that the franchise should be as wide as possible. In Ceylon, where the situation regarding economic conditions and literacy is similar to that in India, universal adult franchise has been tried and its continued retention has been recommended by the Commission on Constitutional Reform.⁴⁵ Universal suffrage may, except for special regions such as the Tribal

⁴⁵ *Ceylon: Report of the Commission on Constitutional Reform* (1945), Chap. X.

Areas, be adopted in all Provincial constitutions, and its adoption will remove the basis of many controversies. Neither communal nor economic differentiation can be alleged when franchise is generalised in this manner.

WEIGHTAGE

The main problems in electorates and elections are: (i) weightage, (ii) joint or separate electorates, and (iii) divisions of constituencies. Weightage to minority communities will most probably be dispensed with in Groups B and C. This will make no difference to the position of the Hindus in the Panjab and will better that of the Hindus in Bengal to a very material extent. The step will, however, affect Sikhs adversely in both the Panjab and the N. W. F. Province and, if representation is given in proportion to numbers to the aborigines, it will alter the position in Assam in a revolutionary manner.⁴⁰ Universal abolition of weightage could not, however, be made the ground for a charge of oppressive or unfair treatment, and every one of the problems created by it will have to be considered individually. The problem of joint electorates has been dealt with above. Whatever the merits of joint or separate electorates, the strength of parties in Sections B and C would not be altered by the adoption of either of the two. And again, the generalised adoption of either system could not be termed unfair or unjust.

OTHER MATTERS

This leaves us with consideration of the division of constituencies and other details regarding the elections. The possibilities of variations in these respects are considerable. There may be single-member constituencies or small or large multi-member constituencies or fluctuating electoral districts with an elaborate system of proportional representation. Will these or other variations affect the strength of parties in a fundamental manner? Given similarity of procedures for all provinces in a Section, the answer to the question will be in the negative. Political affiliations and sentiments are so fixed today, and are likely to remain so fixed till the time of the new elections, that variations which might materially influence a more fluid or a more balanced position will leave Indian conditions unaffected. The two major parties are likely to retain their present

⁴⁰ See above Table No. 1, p. 90.

hold on the votes of the two major communities, whatever the variations of electoral procedures.

PARTICULAR PROBLEMS IN GROUPS B AND C

All this does not mean that the Congress was raising an altogether insubstantial issue when it talked of the oppression of small Provinces or minorities in Groups B and C. The above analysis merely shows that the procedure laid down in the statement of the Cabinet Mission does not carry, in itself, the cause for apprehension. That cause, together with its cure, is to be found in the particular situation of each Province or each minority. Some analysis of the special position of Assam and the Sikhs has been attempted in a previous section.⁴⁷ This must now be carried a step further.

ASSAM

The immediate apprehension of Assamese leadership relates to the loss of the dominant position of the representatives of the general electorate—which, in all parts of India, may be safely identified with the Caste Hindu electorate in the new constitution. It has been pointed out that in case representation proportionate to their numbers in population is given to the Tribal Peoples they will be in a position to hold the balance between Hindus and Muslims in Assam. Further, if the Aborigines and the Scheduled Castes are given representation through separate electorates, the hold of Caste Hindus and the Congress on them might not remain very effective. Nothing, of course, would justify denying proportionate representation to the Tribal Peoples, if that is possible, or denying even the claim to separate electorates of the Scheduled Castes of Assam if they insist upon it. And no serious attention need be paid to the protests of Assamese politicians if all that was involved was the balance of power of political parties. However, the root of the trouble lies deeper and is unfortunately ignored through attention to these superficialities.

RECONSTITUTION OF ASSAM PROVINCE

The fear of the Muslims entertained by the Assamese is the fear of the immigrant Muslim peasant from Bengal. The process of

⁴⁷ See above, Section VIII.

encroachment on Assam by this tide of immigration has been going on for some decades. The Assamese fear, and with much justification, that this tide may soon rise to a great flood and may utterly swamp them, especially if they become members of Group C. The fear about the formation of a Group government seems to be based on some confusion of thought. The danger arises not so much out of association with Bengali Muslims in the province of Bengal but rather out of the presence of a large mass of Bengal Muslims in Assam itself. The district of Sylhet in Assam is overwhelmingly Muslim by religion and Bengali by linguistic affiliation. It is also a populous district. The Bengali Muslims of Sylhet form the bulk of the Muslim population of Assam. This inclusion of the Bengali Muslim element affects the situation of the Assamese in two ways. Firstly, it changes radically the political balance within Assam itself. The Assamese proper, other than the Tribal Peoples, are overwhelmingly Hindu. The Bengali Muslim peasantry tilts the normal balance of power from the hands of the Hindu Assamese towards non-Assamese non-Hindu hands. Secondly, it affects the ability of the Assamese government to deal with the problem of further immigration from Bengal. The inclusion of a vast number of Bengali Muslim peasants within Assam itself must make very difficult the administration of any measures devised to stop new immigration of such peasants.

This fundamental problem cannot be solved by means of any manipulation of political representation or even by refusing to have a close political relationship with Bengal. The real and lasting solution lies in forming as homogeneous a Province as possible for the Assamese. The place of Sylhet is obviously with Bengal. The incorporation of Sylhet and any other contiguous parts of Assam containing a dominant Bengali peasantry into Bengal will rid Assam of a burden which it finds impossible to carry. The separation of Sylhet alone from Assam will reduce the proportion of Muslims in Assam from more than one-third to less than one-sixth. The Muslim vote will then cease to become a complicating factor and the Hindu and the Tribal Peoples, who are the two main constituents of Assam proper, will be able to adjust their mutual relationships without fear of the intervention of a third party. The Assamese government will also then be able to formulate a firm policy for dealing with the problem of immigration from Bengal and to enforce it vigorously.

RESULTING INCREASE OF STRENGTH

It may be argued that the formation of a homogeneous Province of Assam does not eliminate the dangers arising out of an association with Bengal in Group C. The Section may decide that one of the subjects to be taken in common by the Group will be Provincial migrations and settlement and may render nugatory, in this manner, all plans of the Assamese to protect themselves. It is true that a simple majority in the Section can do this. However, if Assam is formed on a homogeneous basis, it will be able to fight against any such moves. For, in this case, the option to come out of the Group can be used with effect by Assam. So long as Assam has a large proportion of Bengali Muslims in its population, the exercise of the choice to come out of the Group may be uncertain. With the elimination of this element, appropriate action by any Assamese legislature could be taken for granted and the knowledge that Assam is bound to opt out, if the Section takes decisions in certain directions, should itself suffice to control the actions of the majority of the Section.

SIKH DIFFICULTIES

The problem of the Sikhs is not the problem of a region but of a community, and its solution is made difficult because what the Sikhs call their "homeland" is not exclusively, not even overwhelmingly, Sikh. At the time of the Round Table Conferences some proposals for the partition of the Panjab were canvassed, but nothing came out of them, and under the Government of India Act (1935) the Sikhs obtained weighted representation in the proposed Federal Assembly and in the Legislative Assemblies of the Panjab and the North-West Frontier Provinces. Weightage has been abolished for representation to the Constituent Assembly and the Sikhs feel that their position has been virtually liquidated thereby. They now demand provision for a communal majority in Section B and perhaps also in the Panjab legislature, and also hint at the need for weighted representation. They had originally decided not to participate in the Constituent Assembly, but changed the decision on some understanding arrived at with the leaders of the Congress. The purport of the understanding has not been made public, but evidently it is some sort of commitment on the part of the Congress to support Sikh demands. The demand for communal majorities in the Section and Provinces has been emphatically reiterated after

the decision of the Congress to accept the statement of December 6, 1946.

SIKH DEMANDS

The demands of the Sikhs raise issues of very great importance and significance for the future. The major advance in the direction of sanity in dealing with the Indian situation, made as a result of the statement of the Cabinet Mission, has been with regard to the principle of weightage. It must be considered a great gain accruing from the proposals of the Mission that in the composition of the Constituent Assembly the principle of weightage has been definitely rejected. The rejection, as has been pointed out above, was brought about by the action of the Muslim League which was anxious to maintain its small proportionate majority in the "Pakistan" Group intact. Once, however, in this all important matter, weightage has been given up, the inutility and inappropriateness of the device become admitted. The Cabinet Mission has also laid down that the interests of the minorities should be safeguarded by direct provisions in that behalf. A re-arrangement of political representation, by weightage, is thus, by implication, admitted to be ineffective as a means of safeguarding minority interests. The absurdities to which weightage leads and the impossibility of arithmetically achieving it, in many circumstances, have been previously acknowledged by many.⁴⁸ But it had become impossible since the Lucknow Settlement to go back on weightage. Now that the Cabinet Mission has set it aside in this all important matter of elections to the Constituent Assembly, and that at the instance of Muslims, it may be possible to oppose its revival in any contingency or context in the future. The doctrine of representation in proportion to population adopted in the composition of the Constituent Assembly might easily be extended to the whole field of political representation. This gain would be, however, completely nullified if Sikh insistence on weightage bore fruit. Any concession made in order to conciliate the Sikhs would naturally lead to the reinstatement of the principle of weightage in specific representation, and once the principle is reinstated its introduction for every type of constitution and for all communities would be impossible to resist.

⁴⁸ The way in which the principle of weightage has to be logically worked out is best brought out in Dr. Ambedkar's *Communal Deadlock and the Way to Solve It*, Presidential Address to the All-India Scheduled Caste Federation, 6th May, 1945. It is impossible to contemplate Muslims accepting the results of such a universal application of the principle.

SIKH DEMANDS: UNACCEPTABLE

The other demand of the Sikhs for safeguarding their interests is similarly placed. It has been pointed out above how one of the gravest defects of the proposals of the Cabinet Delegation is the provision of separate communal majorities. At present the provision is confined to the Union legislatures. The Muslims are not likely to welcome its introduction in Muslim Provinces and Groups and, therefore, any general extension of that provision may be prevented. However, if the Sikhs insist on its inclusion in the Constitution of the Panjab or of Group B, its extension to all Groups and all Provinces would logically follow. Almost anything might be brought within the scope of the phrase "major communal issue," and the communal majority will become, in the hands of an obstinate minority, a capital instrument for holding up all progress. The introduction of the concept in the government of the Union is bad enough; but the government of the proposed Union will, after all, be always weak. The Provinces of the future will be comparatively homogeneous and united, and their governments may be strong and be possessed of ample resources. It would be a major political disaster to introduce this new vicious principle into their constitutions.

NOT HELPFUL TO SIKHS

It would, obviously, be a very short-sighted step on the part of the Congress to press for the undemocratic and obstructing proposals made by the Sikhs. The political demands put forward by the leaders of the Sikh community are, however, not only unacceptable in themselves but they would not serve real Sikh interests either. A communal majority is at best an instrument of obstruction and a means of bargaining. It cannot directly be used for shaping a positive policy. Weightage also is of little use for a comparatively small minority. Shrewd political bargaining may, in a balanced state, bring occasionally good dividends, but no balancing device can really prevent ill-usage or oppression if the majority is organised and determined. The history of the Panjab since 1920 has well exemplified this. The complaints of the Sikhs and of the Hindus in the Panjab against the dominantly Muslim ministries have related chiefly to administrative services, educational facilities and religious liberties.⁴⁹ These complaints will not stop as long as the Sikhs and

⁴⁹ For a representative and detailed account see *The Plight of Panjab Minorities*, Speech of Dr. Sir Gokulchand Narang, 1942.

the Hindus are unable to control by themselves affairs regarding these vital matters for their own regions.

A SIKH SUB-PROVINCE

The real way of meeting Sikh apprehensions is not to think in terms of weightage or communal majorities but in terms of a unit in which the Sikhs are numerically significant. Within such a unit, which can be a sub-Province in the Panjab, the Sikhs will be able to influence to a very large extent most nation-building and cultural activities; and within it they could find scope for self-realisation through political activity in a manner which will be always denied to them in any larger unit, whatever the safeguards adopted. The problem of the formation of such a unit is not easy. The Sikhs are nowhere in a majority. However, in some districts of the Panjab they are heavily concentrated. If these districts are joined together, a compact and fairly populous unit will be formed in which the Sikhs will be, though not the majority community, possibly the most numerous community. And in the light of past history this numerical strength of the Sikhs may be expected to increase considerably, in time, in this region. The unit will gain greatly in cohesion and resources if the Sikh (Indian) States, which are at the heart of it, are induced to join the unit. The objective of building up something like a Sikh political unit should be enough to fire the imagination and secure the co-operation of the Sikh rulers of these Indian States.⁵⁰

HINDUS IN THE PANJAB AND BENGAL

The position of the Hindus in the Panjab and Bengal can be dealt with in a similar manner. Large numbers of Hindus in the Panjab will form part of the proposed Sikh unit. The creation of the Sikh unit will also lead to the creation of another unit to the South-East which will be a dominantly Hindu sub-Province. In Bengal the Hindus have been reduced for many years past to even a worse position than that of the Hindus and Sikhs of the Panjab. They have wielded, on account of a variety of reasons, even less political influence and complain of oppression in all directions. Occasionally, as over the Secondary Educational Bill, the chorus of complaints has mounted high, but always with little avail. The Hindus of Bengal are concentrated to a considerable extent in a

⁵⁰ See Appendix, Units and Sub-Units in an Indian Union.

compact, rich and populous region, a region large and rich enough to become, if necessary, a separate federating unit on its own. It can rightfully claim to become at least a sub-Province with large powers.

HINDU SUB-PROVINCES* IN BENGAL AND THE PANJAB

The formation of these sub-Provinces in the Panjab and Bengal should improve the relations between the communities to a very large extent. The sub-Provinces will exercise authority over those local, educational and cultural matters in which most acute controversies arise. At the same time, there need be no partition of the Provinces, and for such purposes as over-all economic planning, all the Provincial resources will be available. There is no reason why the Muslim League should object to the formation of these sub-Provinces or to the proposed reconstitution of Assam. The sub-units left to the Muslims will be overwhelmingly Muslim where Muslim policies will meet with no opposition, and the Muslims will also control, in the main, the policies in the Provincial and the Group sphere. Indeed, this would be an arrangement which would logically extend the principle of balance and autonomy on which the Indian Union is proposed to be constructed to the constitution and functioning of the Provinces and the Groups.

BALANCE IN UNION AND GROUPS

The discussion in the preceding paragraphs seeks to illustrate the nature of the problems that will arise in the constitutional settlement. In some respects the reasonable lines of agreement appear clear and, given mutual goodwill and confidence, solutions should be easily found. On the other hand, in relation specially to the problems of the structure of the Union Government, the approach of the two parties is likely to be fundamentally different and agreement may become difficult. There is every chance that a position of deadlock may be reached over some of these controversial issues. And there is no way provided for in the statement of the Cabinet Delegation for resolving a deadlock.

ARBITRATION

The proposal was often made by the Congress that when a dispute arose in the process of constitution-making, the specific issue

should be referred to arbitration. Arbitration, however, never proved acceptable to the Muslim League and was not provided for in the Delegation's proposals. There are many obvious difficulties in the way of resorting to arbitration as the general means of settling disputes in the process of constitution-making.

DIFFICULTIES OF AGREEMENT

In the first instance, arbitration must be agreed upon by both parties in advance, and cannot be forced; and only in exceptional cases will any party agree in advance to arbitration, in a general manner, on all the issues that may possibly arise out of a complicated process covering a wide variety of important issues connected with constitution-making. Independent powers do not pledge themselves to arbitration on all matters, defined and undefined; even states within the British Commonwealth have not been persuaded to provide permanently the means by which disputes among themselves could be referred to arbitration.⁶¹ The readiness of the Congress to refer every dispute to arbitration, perhaps, only emphasizes the intensity of its desire to maintain Indian Unity at all costs; to the Muslim League, on the other hand, the Indian Union is acceptable only on certain terms. It is not really certain whether the Congress would itself agree to arbitration in every matter. For example, if it is proposed to the Congress that the question of the relation of India to the British Commonwealth, whether it should or should not continue to be a member of the Commonwealth, be referred to arbitration, the reply of that body can easily be anticipated.

CHOICE OF ARBITRATOR

Secondly, in disputes arising out of conditions of strong emotional reactions or a delicate balance of power within a country, an arbitrator who has both the necessary discernment and the necessary objectivity would be almost impossible to find. Pandit Nehru,

⁶¹"It is a signal fact that, while compulsory arbitration of disputes with foreign States had been undertaken by the whole Empire in 1929, it proved impossible to secure agreement to any compulsion or even to the establishment of a permanent body to deal with such disputes, though it was obvious that the existence of such a body was almost essential, if disputes were to be dealt with judicially. In lieu, arbitration *ad hoc* of a voluntary character was decided upon, and all that could be done was to make suggestions for the competence and composition of the Court to arbitrate. It was agreed that only differences between Governments could be referred to it, and only such differences as were justiciable, thus excluding the possibility of India raising the immigration issue." Keith: *Dominions as Sovereign States*, 1938, p. 137, 138.

writing to Mr. Jinnah on 10th May, 1946, regarding the choice of an umpire to settle matters of difference between parties, states: "We have felt that it would be desirable to exclude Englishmen, Hindus, Muslims and Sikhs."⁵² It would, indeed, be necessary to exclude Indians of all the other communities also; because there could hardly be found any who is eminent enough to arbitrate and who has yet not pronounced upon the vital issues affecting the future of this country.

STATUS OF PARTIES IN ARBITRATION

Arbitration presupposes the mutual independence of status of the two parties to the dispute. A dispute, purely within the internal jurisdiction of any organisation and between members of that organisation, cannot be referred to external arbitration without detracting from the authority of that organization. Invoking the services of an external arbitrator as a means of settling internal disputes within a state could only lead to a serious diminution of the internal sovereignty of the state. Even while attempting to protect the rights of minorities, the League of Nations was keenly aware of the dangers of external arbitration and was at pains to avoid creating a situation in which the government of any state and a minority within it would be placed "in a position analogous to that of parties opposed to one another in legal or arbitral proceedings." The proposed arbitration by the Congress offends either against this principle of internal sovereignty or, in the alternative, concedes an independence of status, and consequently of action, to the Muslims which carries very far-reaching implications with it.

SUITABILITY OF SUBJECTS OF ARBITRATION

Lastly, arbitration is appropriate only to disputes relating to rights and claims, disputes that can be settled by reference to principles either of international or municipal law or to precedents in international or national decisions. Arbitration cannot operate for settling differences relating to what might be called preferred positions or arrangements. Whether a certain power shall be ceded to the Centre, whether more or less weightage shall be given to certain interests are questions not to be satisfactorily settled by resort to arbitration. At least, they could be so settled only when there is agreement on fundamentals, and it is a small difference of detail that re-

⁵² *Op. cit.*, No. 15.

mains outstanding. All the main issues could be decided only by negotiation and by agreement, arising freely or out of pressure of circumstances, of the two parties.

PROSPECT OF AGREEMENT

We have seen that, given a reasonable attitude on the side of both parties, most outstanding points in dispute are capable of being settled satisfactorily. This cannot, however, be guaranteed. Especially is it possible that the party which is not impatient of delay may do nothing to avoid deadlocks; and in this bilateral process of constitution-making no simple way out of a deadlock can be provided. Repeated deadlocks may end in a final breakdown which must, as far as possible, be avoided. The strength of the position of the Muslims lies in their insistence that in the absence of a settlement satisfactory to themselves, they would press forward with their demand for Pakistan. If the Congress and Hindus are anxious to build an Indian Union at all costs, they must give in fully to the Muslims. In the alternative, they must consider the stage at which a partition would be preferable to further concessions for maintaining unity. And they would be wise if they examined the position fully at the start of the negotiations and made up their mind as to how far they could go. For this purpose, they must define unequivocally their attitude towards the demand for Pakistan and towards the principle of self-determination on which it rests.

XI. THE PRINCIPLE OF PAKISTAN

PROVISION IN CRIPPS' OFFER

The British will play an important part, and it may well be the decisive one, in the final maintenance or break-up of Indian unity. The Muslim League adopted the objective of a separate Muslim state in March 1940; by March 1942 the claim of the League had been accepted in principle. The declaration made by H. M. Government through Sir Stafford Cripps in March 1942 gave an undertaking to implement any constitution framed by an Indian Constituent Assembly. The undertaking was, however, subject to:^{2a}

^{2a} *Cabinet Mission in India*, p. 179.

"The right of any Province of British India that is not prepared to accept the new constitution, to retain its present constitutional position, provision being made for its subsequent accession if it so decides.

"With such non-acceding Provinces, should they so desire, His Majesty's Government will be prepared to agree upon a new constitution, giving them the same full status as the Indian Union and arrived at by a procedure analogous to that here laid down."

The purpose of the proviso was clear and the Working Committee of the All-India Muslim League, while criticising the Cripps' proposals in detail, expressed "gratification that the possibility of Pakistan is recognized by implication by providing for the establishment of two or more independent Unions in India."

MUSLIM LEAGUE CRITICISMS

The Working Committee of the League expressed dissatisfaction with the method and procedure laid down in the Cripps' declaration for exercising the right of non-accession to the Union. They complain that "the right of non-accession has been given to the existing provinces, which have been formed from time to time for administrative convenience and have no logical basis." The Cripps' offer bore no fruit, and there was no later occasion for discovering the detailed manner in which the League could have sought to modify the terms relating to the right of non-accession; for, by the time political negotiations were again undertaken, the British point of view in this regard had undergone a decided change.

CHANGE IN BRITISH ATTITUDE: VICEROY ON INDIAN UNITY

The change in the British view is dated, by general consensus of opinion, from the speech by the Viceroy, Lord Wavell, to a joint session of the Central Legislature, on 17th February, 1944. The Viceroy said: "On the main problem of Indian unity, the difference between Hindu and Muslim, I can only say this: You cannot alter geography. From the point of view of defence, of relations with the outside world, of many internal and external economic problems, India is a natural unit."⁵⁴ He then went on to point to federations like Canada, Switzerland, U. S. A. and the U. S. S. R., where simi-

⁵⁴ Indian Information, March 1, 1944, pp. 221-22.

lar problems had been successfully solved and ended on the same note on which he had begun. "These examples are before India for her constitutionalists to study. It is for her to say which will most nearly fulfil her own requirements. But no man can alter geography."⁶⁵

In the highly controversial matter of the maintenance of the integrity of India, the Viceroy definitely pronounced himself in favour of the Hindu and the Congress view. The concern of the Viceroy over Indian unity seemed to have affected the policy of the British Cabinet also. The concern was very apparent during the negotiations of the Cabinet Delegation with Indian leaders, and the withdrawal of the Muslim League from its claim for Pakistan was undoubtedly the result of the persistence of the Viceroy and the Cabinet Delegation in this behalf.

RESULTS OF CHANGE

The interests of the British in the maintenance of the unity of India gave their policy towards Indian political parties an unusual twist. A leaning towards the demands of minorities in general, and of the Muslims in particular, has been traditional with the British in India. The demand for self-determination by big regions was also unexceptional and had not been opposed elsewhere by the British. The proviso of the Cripps' proposals was, therefore, in line with British historical policy. The effort to maintain Indian unity brought about a departure from this policy. It led the British and the Viceroy to ally themselves with the Congress and it helped to fortify the position of the Congress. It may also have been one of the reasons which led the Congress to take up, initially, an intransigent attitude in its interpretation of the Grouping provisions. The Viceroy's action in inviting the Congress to form the Interim Government, his hesitant and even ambiguous stand in relation to the Congress acceptance of the long-term proposals, his acquiescence in convening the Constituent Assembly while this was not clear, are

⁶⁵ Professional geographers, however, are generally agreed on holding the opposite view. Most of them ban the term "natural boundaries" from scientific literature and maintain that all boundaries are artificial, i.e., man-made, "only some are less artificial than others." Cf. Boggs, *International Boundaries* (1940), pp. 22-25.

Similarly, in discussing which geographical association between areas can be held valid, Prof. Hartshorne writes: "First of all, not that of a 'natural' unity of a state; for, just as the concept of 'natural boundaries' was rejected, so must also the popular idea of a state's 'natural unity.'" In *Geographical Aspects of International Relations*, ed. Colby (1938), p. 164.

all evidence of his anxiety to go a long way for keeping in with the Congress. And this anxiety evidently arose out of the desire for the maintenance of Indian unity. It is sometimes explained as arising out of the fear of appearing otherwise to block the progress of India towards freedom. In the words of Mr. Attlee, "A minority must not be allowed to place a veto on the advance of a majority." The creation of two federations would, however, not have meant either a block in the road to freedom or allowing a minority to veto the advance of a majority. British policy during the years 1944 to 1946 must then be interpreted as being determined by a special British interest in Indian unity.

BRITISH INTEREST IN UNITY

What is this interest? The Viceroy, the Cabinet Delegation and the British generally seem to have been satisfied with the form of the Mission's proposals, and it is necessary to see clearly how a British interest was satisfied by them. We have seen that the proposals maintain merely a formal unity, a defence unity. The only subject, other than foreign affairs and defence, within the purview of the union is communications. The control over communications is physically more important for assuring effectiveness of defence than control of any other activity. It is on this account that it forms one of the Union subjects. The Union of India, as envisaged in the proposals of the Delegation, is purely a defence union. The statement that Indian unity is maintained for defence purposes has itself to be interpreted in a very limited sense. Under the suggested scheme India is not enabled to become strong for defence. A Union government not controlling or planning the major economic activities over the whole country would be unable to build up a strong defence organisation of its own. The defence unity of India is a formal unity.

SIGNIFICANCE FOR BRITISH OF DEFENCE UNITY

The maintenance of even formal unity is, however, highly significant from the point of view of global strategy in a balance of world powers. In the event, for example, of a possible conflict between the U. S. S. R. and the British Empire, the defence unity of India might be invested with very great importance. The powers with the command of the seas would be able completely to dominate Peninsular India and, with the added command of S. E. Asia, to

control from the air the Gangetic Plain. If these sections of the country are integrally connected with the North-West, it would then be possible to keep it continually within the orbit of Empire defence organisation, and to arrange for continuous vigilance and planning for land defences right up to the North-West border of India. In case of separation, the political state of North-West India might slowly find itself inevitably influenced by forces operating in the Middle East and the Central Asian land block. It could not be easily dominated from the sea, and control even by air would not be easy in the absence of control of the Middle East and Central Asia. As a result, the power controlling the high seas and the South-East Asian lands would find itself unable to influence North-West India and a division of India might mean the subtraction of this part of India from its potential sphere of influence. This would have very serious consequences for the defence strategy of the Empire. These considerations undoubtedly explain the difference evident in the British attitude towards the unity of India as between the visit of Sir Stafford Cripps and that of the British Delegation.

FUTURE COURSE OF BRITISH POLICY

The course of events in the immediate future depends almost entirely on whether the bias in favour of unity will continue to maintain the twist to British policy, or whether that policy will soon resume its traditional lines. If the twist is continued, the British will acknowledge the work of the Constituent Assembly, especially after the resolutions of the A. I. C. C. of January 6, 1947, as being properly under the terms of the Delegation's statement. They will put pressure on the Muslims to join the Constituent Assembly and will decide to recognize the constitution prepared by the Assembly as being applicable to India as a whole. Such an attitude on the part of the British may force the Muslim League to enter the Constituent Assembly. Even if the League does not participate in the work of the Assembly, it is possible that firm action on the part of the British may, at the risk, no doubt, of some discontent and unrest, succeed in bringing an Indian Union into existence. On the other hand, if British policy resumes its normal course, immediate recognition will be given to the fact of Muslim non-co-operation with the Constituent Assembly. The stand of the Muslim League, whether justified or not, will be taken as indicating that the Muslim regions as a whole are unwilling to join a Union with the Hindu regions, and the British, it will be said, could not coerce the Muslim

regions to act against their wishes. It will then be necessary to define the right of non-accession in terms of specific units and define the manner in which such a right could be exercised, with a high probability that two or more separate independent political units will come into existence within the present boundaries of the Indian Empire. A definite pronouncement on the part of the British on these lines will immediately clear the political atmosphere. The Hindus and the Congress will, of course, protest but will not take any active steps to resist the decision. And in case the Muslim state is confined to Muslim majority regions proper, the solution, whatever its long-term results, is likely to settle successfully the immediate difficulties. British policy may, in the alternative, continue in the same state of apparent indecision exhibited by it during the last six months, and the Indian political situation will, in the event, continue to worsen.

PARTITION OF INDIA AND DEFENCE

What are the chances that British policy will take any of these courses? The desire of the British to maintain defence unity is likely today to be as strong as ever. However, their policy might have been affected by other considerations. The first and the most important consideration is the difficulty experienced in forming an Indian Union amicably. The Delegation's proposals indicate, no doubt, the optimum position from the British point of view; but if that is not attainable without use of force, or without running the risk of seriously alienating an important section of the Indian people, the insistence on unity may be dropped. Defence objectives may be attained and global plans worked with fair ease even with two major states taking the place of a unified India. It has been held that for its oceanic and air strategy the co-operation of Hindustan is more important for the British than that of Pakistan, and that it will add little to the security of Pakistan to seek the co-operation of the Muslim states of Western Asia.⁵⁶ On the other hand, it is equally true that Hindustan, especially Peninsular India, will be powerless against a dominant oceanic power, and that the dangers flowing from a Pakistan which has moved into the Russian orbit are great. So that the British must be more afraid of alienating the Muslims than the Hindus. In case a division is inevitable, they should particularly value a firm, friendly and military alliance with

⁵⁶ Panikkar: *The Basis of an Indo-British Treaty*, 1946, Chap. IV.

Pakistan, and could count on the incapacity of a Hindustan, flanked on the north-west by Pakistan, to oppose British policy actively, even if it desired to do so.

PAKISTAN AND THE BRITISH

Reasons other than those relating to defence should also give a bias towards placating the Muslims to British policy. The Hindu and Muslim points of view are likely to differ considerably in looking at British capital and British technical and service personnel. The resources of Hindu capitalists are comparatively ample and Hindu professional classes produce, or are capable of producing in the near future, in large numbers the necessary personnel. The Muslims, as a community, need more assistance in both respects; they would not desire to help the expansion of Hindu capitalists or the employment of Hindu personnel, and, if they are keen on a separate state, would welcome British capital and personnel if it is available on reasonable terms. The retention of British personnel in defence services and the entry of British capital in even Sections B and C may not be equally easy in the Indian Union. The outlook may be affected also by any improvements that might take place in the general international situation. Such an improvement would give the time necessary for adjusting defence strategy on the basis of Pakistan and Hindustan, instead of on that of an Indian Union.

In view of all these considerations, the British may slowly come to reconcile themselves to the prospect of a divided India rather than seriously alienate the sympathies of the Muslims. The statement issued by H. M. Government on December 6, 1946, may itself be an indication of a slight change in attitude. The interpretative part of the statement may contain nothing that is new; but the declaration that a constitution would not be forced on any unwilling parts of the country definitely committed the British, in certain circumstances, to a division of India. The expression of any such views seemed to have been carefully avoided since 1944. It is possible, however, to exaggerate the importance of this declaration. It merely indicates, perhaps, that there are limits beyond which the partiality for maintaining Indian unity will not carry British policy.

MUSLIM LEAGUE AND THE CONSTITUENT ASSEMBLY

Whether the limits are reached early or not depends almost entirely on the policy of the Congress. The resolution passed by

the A. I. C. C. on January 6, 1947, seems to have at least temporarily postponed an immediate crisis, which would have been inevitable if the Congress had persisted in its original stand. The Muslim League could, of course, force the British to take a definite decision by finally revoking its acceptance of the statement of 16th May, 1946, in view of all that has passed since. The League may, however, be taking grave risks of again driving the British to back the Congress and being forced out of the Interim Government. Unless other events precipitate action, the League may adopt dilatory tactics and, if need be, even enter the Constituent Assembly. The British will then continue to hold the balance and the conflict will enter another stage.

The Muslim League has based its claim to Pakistan chiefly on the principle of self-determination. The right of self-determination means, in the context of the Indian Union, the right either of secession, if the Union is taken to be a successor state, or that of non-accession, if it is taken to be a newly fashioned entity. And a proper provision of this right will imply definition of the unit which would exercise the right and of the manner in which the right will be exercised. The Cripps' offer and the subsequent clarification made by Sir Stafford defined all these matters fairly clearly. The statement of the British Cabinet dated 6th December, 1946, carries the implication of a right of self-determination because it seems to require the willingness of a "part" before a constitution is imposed on it.

The statement of the Cabinet Delegation of 16th May, 1946, does not refer to the right of self-determination. It, however, discusses the argument for a separate state of Pakistan which was based⁷⁷ "first, upon the right of the Muslim majority to decide their method of government according to their wishes; and secondly, upon the necessity to include substantial areas in which Muslims are in a minority in order to make Pakistan administratively and economically workable."

CABINET DELEGATION ON PAKISTAN

The statement of the Cabinet delegation contains nothing as to the first part of the basis of Pakistan. It neither supports nor refutes the claim to self-determination. The delegation confine their

⁷⁷ *Cabinet Mission in India*, p. 11.

attention strictly to examining the practical results and the feasibility of the partition of India. As to the second part of the basis, the delegation emphasize how giving effect to it will conflict with the equal rights of non-Muslims. In discussing the plea for the larger Pakistan, they point out, "Every argument that can be used in favour of Pakistan can equally in our view be used in favour of the exclusion of the non-Muslim areas from Pakistan." This consideration appears so decisive to the Cabinet Delegation that they do not find it necessary to say anything more in relation to the claim to a larger Pakistan. They, however, consider separately whether "a smaller sovereign Pakistan, confined to the Muslim majority areas alone, might be a possible basis of compromise." Two important considerations are put forward by the Delegation to show that the smaller Pakistan is impracticable. These are: (i) The Muslim League regards such a Pakistan as quite impracticable because it would entail the exclusion from Pakistan of large areas claimed by that body, (ii) It involves a radical partition of the Panjab and Bengal which would be contrary to the wishes and interests of a very large proportion of the inhabitants of these Provinces.

ARGUMENTS AGAINST PAKISTAN

The Delegation's statement points, in addition, to a number of weighty administrative, economic and military considerations against partition; partition would disintegrate the entire system of communications and defence; it "would inflict a deadly blow on the long traditions and high degree of efficiency of the Indian Army." It would make more difficult the association of Indian States; and finally, the two separated halves of Pakistan would depend for inter-communication on the good-will of Hindustan.

Some observations must be made on these arguments of the Cabinet Delegation. Their comment regarding the larger Pakistan is just. The two parts of the basis of the claim involve a mutual contradiction which is fatal to it. The smaller Pakistan may, however, be justified on the sole basis of the wishes of the majority in a region, i.e., self-determination. The two specific arguments used against it by the Delegation have little or no force. It is the Muslims who primarily ask for a partition of India; a uniform application of the plea for self-determination can result in a partition which gives them only the smaller Pakistan. The Muslims must either accept this, or withdraw completely their plea, if they feel

it is impossible to work this smaller state. Similarly, Bengal and the Panjab will be partitioned only if the Muslims in those regions insist on a partition of India and the Hindus and the Sikhs equally insist on not being incorporated within a Pakistan. If this happens, the wishes of the people of Bengal and the Panjab will be completely other than those assumed by the Delegation.

ARGUMENTS EXAMINED

In general, the case of the Delegation against allowing Muslims to partition India by exercising their right of self-determination rests mainly on the universal disadvantages of disintegrating a large unit. These disadvantages are patent. They have never yet been allowed to stand in the way of the formation of new national states where the claim has been backed by sufficient expression of popular feeling. Whether Pakistan will be able to achieve adequate defence in depth is surely a matter of consideration only for the Muslims. Either half of Pakistan is broader than a large number of sovereign states in Europe and Asia. But even if this were not so, the risk is for the Muslims, with full knowledge, to decide upon. That the two halves of Pakistan are separated is a geographical fact known to Muslims, and their plea for partition must be presumed to have taken due account of it. And as to the traditions of India's defence forces, they are traditions associated essentially with foreign rule and also with a deliberate policy of selective recruitment. A break in them is not likely to be considered as a phenomenon of major political significance by the bulk of the Indian people. The position of the Indian States in face of a partition will be considered separately, but the difficulties of Indian States cannot be a fundamental consideration in the decision relating to partition. In short, though the considerations put forward by the Delegation may show why partition is undesirable, how it is beset with practical difficulties, and why the Delegation would not recommend its acceptance to the British Government, they are not such as to rule out of account a plea for self-determination if it is insistently pressed on behalf of any region.

STATEMENT OF 6TH DECEMBER, 1946

The last sentence of the statement of the declaration of the British Government of 6th December, 1946, runs as follows: "Should the constitution come to be framed by a Constituent As-

sembly in which a large section of the Indian population had not been represented, His Majesty's Government would not, of course, contemplate—as the Congress have stated they would not contemplate—forcing such a constitution on any unwilling parts of the country.”

RESOLUTION OF CONGRESS WORKING COMMITTEE, APRIL 1942

There is in this a deliberate and purposeful reference to the position of the Congress. It is necessary now to examine this. The first time that it was necessary for the Congress to formulate a definite view in this matter was when the Cripps' offer was made. The resolution passed by the Working Committee of the Congress at this time and communicated to Sir Stafford Cripps on 2nd April, 1942, contained the following paragraph:

“The acceptance beforehand of the novel principle of non-accession for a province is also a severe blow to the conception of Indian unity and an apple of discord likely to generate growing trouble in the provinces, and which may well lead to further difficulties in the way of the Indian States merging themselves in the Indian Union. The Congress has been wedded to Indian freedom and unity and any break in that unity especially in the modern world when people's minds inevitably think in terms of ever larger federations, would be injurious to all concerned and exceedingly painful to contemplate. Nevertheless the Committee cannot think in terms of compelling the people in any territorial unit to remain in an Indian Union against their declared and established will. While recognising this principle, the Committee feel that every effort should be made to create conditions which would help the different units in developing a common and co-operative national life. The acceptance of the principle inevitably involves that no changes should be made which result in fresh problems being created and compulsion being exercised on other substantial groups within that area. Each territorial unit should have the fullest possible autonomy within the Union, consistently with a strong national State. The proposal now made on the part of the British War Cabinet encourages and will lead to attempts at separation at the very inception of a Union and thus create friction just when the utmost co-operation and goodwill are most needed. This proposal has been presumably made to meet a communal demand, but it will have other consequences also and lead politically reactionary and obscurantist groups

among different communities to create trouble and divert public attention from the vital issues before the country.”⁵⁸

A. I. C. C. ON SECESSION, 1942

The resolution exhibits fully the difficulty experienced by the Congress in giving a clear formulation of its view on the matter. However, in spite of the numerous involutions and saving clauses, it is possible to interpret this resolution to mean that in the opinion of the Congress all attempts should be made initially to maintain unity and nothing done to encourage or facilitate separation, but that if all these attempts failed, the Congress would not contemplate compelling a people against its will to remain in the Indian Union. Within a month of the passing of this resolution there was a meeting of the All India Congress Committee, which is, in the Congress Constitution, an authority superior to the Working Committee. At this meeting of the A. I. C. C. the issue arising out of the demand of the Muslims was very clearly and sharply brought up for decision. On the one hand, there was a resolution sponsored by Mr. C. Rajagopalachariar which contained the following:

“It is absolutely and urgently necessary in the best interests of the country at this hour of peril to do all that Congress can possibly do to remove every obstacle in the way of establishment of a national administration to face the present situation; and, therefore, inasmuch as the Muslim League has insisted on the recognition of the right of separation of certain areas from United India upon the ascertainment of the wishes of the people of such areas, as a condition precedent for united national action at this moment of grave national danger, the A. I. C. C. is of opinion that to sacrifice the chances of the formation of a National Government at this grave crisis for the doubtful advantage of maintaining a controversy over the unity of India, is a most unwise policy, and that it has become necessary to choose the lesser evil and acknowledge the Muslim League’s claim for separation, should the same be persisted in when the time comes for framing a constitution for India and thereby remove all doubts and fears in this regard, and to invite the Muslim League for a consultation for the purpose of arriving at an agreement and securing the installation of a National Government to meet the present emergency.”⁵⁹

⁵⁸ *Indian Annual Register*, Vol. I, 1942, p. 225.

⁵⁹ *Op. cit.*, p. 295.

This resolution was voted down by the A. I. C. C. by an overwhelming majority. And to clinch the matter finally, the Committee proceeded to adopt by an equally large majority the following resolution:

"The A. I. C. C. is of opinion that any proposal to disintegrate India by giving liberty to any component state or territorial unit to secede from the Indian Union or Federation will be highly detrimental to the best interests of the people of the different states and provinces and the country as a whole, and the Congress, therefore, cannot agree to any such proposal."¹⁰

At this meeting of the A. I. C. C., therefore, the section of opinion emphasizing unity and integrity won a complete victory over those who would, at least theoretically, concede the right of self-determination. However, the President of the Congress, Maulana Abul Kalam Azad, continued to maintain that the action of the A. I. C. C. in no way contradicted the position taken up by the Working Committee in its resolution on the Cripps' Proposals.

RESOLUTION OF WORKING COMMITTEE, 1945

Soon after the Allahabad Meeting of the A. I. C. C. the Congress became an unlawful body. When legitimate political activity was resumed, the matter again came up for discussion. And the Working Committee passed in September 1945, a resolution on this matter which ran as follows:

"As some misapprehensions have arisen in regard to certain resolutions of the A. I. C. C. and of the Working Committee passed in 1942 relating to the further constitution of India, the Working Committee restates the position as follows:

"In accordance with the August 1942 resolution of the A. I. C. C. it will be for a democratically elected Constituent Assembly to prepare a constitution for the government of India, acceptable to all sections of the people. This constitution, according to the Congress view, should be a federal one, with the residuary powers vesting in the units. The fundamental rights as laid down by the Karachi Congress, and subsequently added to, must form an integral part of this constitution. Further, as declared by the A. I. C. C. at its meeting held in Allahabad in May, 1942, the Con-

¹⁰ *Op. cit.*, p. 294.

gress cannot agree to any proposal to disintegrate India by giving liberty to any component State or territorial unit to secede from the Indian Union or Federation. The Congress, as the Working Committee declared in April, 1942, has been wedded to Indian freedom and unity and any break in that unity, especially in the modern world when people's minds inevitably think in terms of ever larger federations, would be injurious to all concerned and exceedingly painful to contemplate. Nevertheless the Committee also declared, it cannot think in terms of compelling the people in any territorial unit to remain in an Indian Union against their declared and established will. While recognising this principle, every effort should be made to create conditions which would help the different units in developing a common and co-operative national life. The acceptance of the principle inevitably involves that no changes should be made which result in fresh problems being created and compulsion being exercised on other substantial groups within that area. Each territorial unit should have the fullest possible autonomy within the Union, consistently with a strong national State."⁶¹

That the resolution achieved no clarification must have been evident even to its framers and sponsors. All that it did was to bring together important parts of three resolutions adopted in the past, without any attempt at resolving mutually conflicting expressions. The Working Committee resolution of April 1942 accepted, however hesitatingly, the ultimate decision of the will of the people of any territory. The A. I. C. C. resolution of May 1942 definitely and categorically denied the right of secession to any unit. The resolution of September 1945, married the definite denial on the one side to the hesitating acquiescence on the other, and the resulting union was naturally fruitless.⁶²

DELEGATION STATEMENT AND SECESSION

It is noteworthy that the Working Committee did not submit this resolution to the A. I. C. C. which met immediately afterwards

⁶¹ *Indian Annual Register*, Vol. I, 1945, p. 227.

⁶² In this connexion no reference is being made to the Gandhi-Jinnah talks, because, in the first instance, they were not conducted on behalf of the Congress. Happenings at the time of the entry of the Muslim League in the Interim Government left no doubt that Congress leaders may, in this matter, disregard a commitment on the part of even Mr. Gandhi. Moreover, the Rajagopalachariar formula, as interpreted by Mr. Gandhi, involved the maintenance of some sort of Indian Union and did not concede the Muslim claim to a completely independent State.

for its approval. There has been no further pronouncement on the matter since September 1945. It has been noted above that the Muslim League in the offer made by it on 12th May, 1946, asked for the provision of the right of secession of any Province at the end of ten years. The Congress agreed to complete reconsideration and admitted that reconsideration implied secession though "we would avoid reference to secession as we do not want to encourage the idea." The Delegation has avoided reference to secession; presumably, however, the right of secession has been admitted by implication. By acceptance of the Delegation's Scheme the Congress has avoided the possibility of immediate secession. It has, however, accepted the right of Provinces to secede from the Union at the end of a ten year period.

GROUPING AND SELF-DETERMINATION

The acceptance of the statement of 16th May, 1946, by both parties should ordinarily have rendered all discussion on abstract principles, as that of self-determination, unnecessary. This has not happened. The changing attitude of the parties has kept alive the demand for Pakistan, and there has been added the debate over forcing Provinces, at least initially, into Groups. The controversy over Grouping has moved the discussion regarding self-determination on to another field, and the protagonists have changed sides during the process. It is the Congress that now insists on there being no coercion of any people or Province, and asks for full consideration of the wishes of the people concerned. On the part of the League, there has been no direct denial of the right or the need for giving due consideration to the wishes of the people concerned. But the League insists that the Congress cannot be allowed to interpret in its own manner the provisions of the statement of 16th May, 1946; that the acceptance of the statement could be real only if it was accepted fully with the interpretation given by the Delegation itself. This would mean that only such provisions for giving expression or weight to the wishes of the people or a province as were included in the proposals of the Delegation would be acceptable to the League, and no variation from them could be allowed on any plea. The Congress, in its contentions, went back to first principles. The statement issued by the Working Committee of the Congress on 22nd December, 1946, reviewing the British Government's Statement of 6th December, 1946, contained the following: "The Congress approach to the problem of constitution-making has all

along been that coercion should not be exercised against any Province or part of the country, and that the constitution of free India should be drawn up with the co-operation and good-will of all parties and Provinces concerned."

RESOLUTION OF A. I. C. C. (6-1-1947)

The resolution of the A. I. C. C. of 6th January, 1947, accepting the statement of 6th December, 1946, of the British Government contains the following important paragraph.⁶³

"The A. I. C. C. is anxious that the Constituent Assembly should proceed with the work of framing a constitution for a free India with the goodwill of all parties concerned and, with a view to removing the difficulties that have arisen owing to varying interpretations, agree to advise action in accordance with the interpretation of the British Government in regard to the procedure to be followed in the sections. It must be clearly understood, however, that this must not involve any compulsion of a province and that the rights of the Sikhs in the Panjab should not be jeopardised. In the event of any attempt at such compulsion, a province or part of a province has the right to take such action as may be deemed necessary in order to give effect to the wishes of the people concerned. The future course of action will depend upon the developments that take place, and the A. I. C. C., therefore, directs the Working Committee to advise upon it, whenever circumstances so require, keeping in view the basic principle of provincial autonomy."

IMPLICATIONS OF RESOLUTION

The attitude of the Congress raises an important fundamental issue. The Muslim League was unwilling to enter any Constituent Assembly together with members of the Congress unless certain basic features of the future constitution and of procedure in the Assembly were rigidly laid down and guaranteed in advance. The basic conditions of the Delegation's proposals and the procedures laid down in the statement were intended to achieve this. Acceptance by the League of the statement meant that the League would accept the constitution in all its details as it emerged from the Constituent Assembly working according to plan; and that it would not

⁶³ Times of India, 6th January, 1947.

revive its claim to Pakistan. The contention that the work of the Constituent Assembly would be acceptable to any party only as long as the Assembly or any of its part acted fairly according to the notions of that party cuts at the root of the whole scheme. It imports a measure of uncertainty into the situation which, precisely, it was the original intention to avoid. The Congress might originally have demanded certain alterations in the proposals regarding Grouping as a condition precedent of its acceptance. Or, it might now decide to accept the scheme as a whole, knowing it was running a certain risk thereby, but accepting the risk as a necessary part of the process of constitution-making. Whatever the original commitments of a political party, it can always repudiate them if it can show or allege that the opposite party has acted unfairly, or not according to the spirit of the bargain. To stipulate, at the beginning, that the results of the process would not be acceptable in certain eventualities is to make the acceptance itself not full but conditional. And if one party accepts one part of a scheme only conditionally, the other party may well claim to extend the principle of conditional acceptance to other parts.

The Congress claim on behalf of a Province or a part of a Province is, in effect, that if a Province or a part of a Province finds that the results of the deliberations in the Section are not to its liking, it is at liberty to act in a manner contrary to or, at least, not provided for in the statement of the Delegation. The Muslim League could easily extend the same principle to the work of the entire Constituent Assembly and reserve the same right to the Muslim Provinces. If this is done, the unity of India is no longer guaranteed in advance. The Muslim Provinces, and in effect all Provinces, will then be in the position of the Indian States. Their initial acceptance would only be acceptance of the invitation to work in the Constituent Assembly; their final acceptance would be known only after the final picture had emerged completely and had been submitted for acceptance individually to each unit.

DEFINITION OF UNIT FOR EXERCISE OF AUTONOMY

The wording of the statement of the Working Committee and of the resolution of the A. I. C. C. raise another very important constitutional issue. The Working Committee refers to no coercion being exercised against "any Province or part of the country" and the constitution being drawn up with the co-operation of all "parties

and Provinces." The resolution of the A. I. C. C. lays down that there should be no compulsion of "any Province or a part of a Province" and "that the rights of the Sikhs in the Panjab should not be jeopardised." Some of the terms used by both Committees will have to be further clarified if the process of constitution-making is to proceed smoothly. The Committees are, in effect, contending for the right of self-determination. The right has a well-defined meaning in relation to a Province; what does it connote in relation to a part of the country or Province or to the Sikhs in the Panjab? In relation to a community, "rights" perhaps mean no more than those relating to votes and minority safeguards. In relation to a part of a country or Province, the rights, taken specially in relation to grouping, can only refer to non-accession or secession. The exercise of such a right, however, presupposes the existence of a separate political territorial unit. To claim that the wishes of a part of a Province be specifically taken into consideration, is to claim autonomy on behalf of that territory; and the claim implies that the existing Provincial units are unsuited for giving proper expression to wishes of sections or parts which are important enough to be considered by themselves. If this is so, the process of constitution-making cannot progress smoothly unless these parts of a Province or country are constituted into separate Provinces or into sub-units possessing considerable autonomous powers.

WISHES OF THE PEOPLE

The reference to the wishes of the people must be elaborated by a description of the means by which these can be properly ascertained. It would not be enough to say that these are expressed by the views of the appropriate representatives in the Constituent Assembly. The claim may be challenged both on the grounds of the very limited existing franchise and on that of indirect election. Moreover, with reference to constitutional provisions still unknown and unpredictable, the views of the members of a Constituent Assembly already elected cannot be safely guaranteed to reflect the wishes of the people. The wishes of the people could be ascertained only after a knowledge of the proposed steps or provisions. They might be expressed through elected representatives in the legislature; but the fear is expressed that these elections, their arrangements and procedure, might themselves be manipulated. In this event the only way of ascertaining the wishes of the people concerned would be by a plebiscite or referendum.

CONSEQUENCES OF A. I. C. G. RESOLUTION

At present the resolution of the A. I. C. G. of 6th January, 1947, is interpreted as merely indicating conditional acceptance of the Delegation's plan, or threatening direct action, such as withdrawal of representatives from Sections, in certain eventualities. Its implications for constitution-making of the future appear, however, to be much more far-reaching. And without making the acceptance conditional or threatening a break-down of the machinery of the Constituent Assembly, the situation can be well, or even better, provided for by allowing a general plebiscite or referendum on fundamental aspects of the constitutional arrangements at the end of the process of constitution-making and by provisionally reconstituting the Provincial units, so as to make the results of the popular vote fully significant. This is a direction in which, there is every reason to believe, the Muslim League should also desire to advance.

MUSLIM LEAGUE AND THE EXISTING PROVINCES

It has been noted above that the Muslim League in criticising the details of the Cripps' offer expressed dissatisfaction at the right of non-accession being given to the existing Provinces. In connection with the exercise of this right, initially, by the Legislative Assemblies of the Provinces, the League drew attention to the fact that the Muslims in the Legislative Assemblies of Bengal and the Panjab were in a minority and that in Sind and the N. W. F. Province their majority had been considerably lessened because of the weightage given to minorities. Even with the abolition of weightage, the Muslim majority in the Provinces of the Panjab and Bengal, as at present constituted, would be very slight. Further, the Muslims, especially in the Panjab, have found it difficult to form a government fully under their own control because of the strength of minorities. Therefore, they should welcome the reformation of units in such a manner that the Muslim majority areas are brought together into separate units or sub-units even within the region of the Provinces claimed by them. In the exercise of the right of non-accession, the vote of these homogeneous units will indicate true Muslim sentiment without its being necessary for the Muslim League to make the impossible demand of depriving non-Muslims residing in these regions of the fundamental attribute of citizenship—the exercise of the vote in a plebiscite. It would be desirable to avoid the necessity of holding plebiscites over large

areas. Therefore, if the Provinces and sub-Provinces are suitably constituted by agreement the votes of the new legislatures may be held valid for all areas except the specially disputed areas on the border. However, with reformed units, the Muslims need not object even to a general plebiscite.

CONTENT OF DEMAND FOR PAKISTAN

The original resolution which first put Pakistan on the political map asked for a constitutional plan designed on the basic principle that the areas in which "the Muslims are numerically in a majority" shall be grouped to constitute independent states.⁶⁴ The only clarification required in interpreting this resolution is that of the phrase quoted above. Unfortunately, this Muslim claim has been mixed up with the claim to include in Pakistan large areas where non-Muslims are numerically in a majority. This was the mixed claim presented to the Delegation. The Delegation note that "the League were prepared to consider adjustment of boundaries at a later stage, but insisted that the principle of Pakistan shall first be acknowledged." The admission of the principle of Pakistan depends on whether or not it means anything more than the right to self-determination. If the adjustment of boundaries means such adjustment that Pakistan will not embrace areas where Muslims are not "numerically in a majority," the two will, in effect, be identical. And in this event the gradual trend in Congress pronouncements and the force of circumstances should make possible a rapprochement between the Congress and the League.

SELF-DETERMINATION IN U. N. O. CHARTER

It may be said that self-determination is a principle whose application has been proved unworkable by the Peace Settlement after the War of 1914-18, and the demerits of that Peace Settlement are largely to be attributed to the attempt to apply the principle. Whether this is true or not, the hold of the concept on the minds of peoples and politicians of the world has not weakened. This is sufficiently proved by the wording of Section 2 of Article 1 of the Charter of the United Nations, which includes among the purposes of the United Nations "to develop friendly relations among nations *based on respect for the principles of equal rights and self-*

⁶⁴ Muslim League 27th Annual Session, Lahore, March 1940, Resolution No. 1.

determination of peoples and to take other appropriate measures to strengthen universal peace." And this reference was inserted by the first Commission of the Conference by adding the phrase put in italics above to the original draft of the Charter.⁶⁵ It is significant that the United Nations Charter lays down that inculcation of respect for the principle of self-determination is an appropriate measure to strengthen universal peace.

EXPERIENCE OF INTER-WAR YEARS

As to the lessons of the experience of the inter-war years, they are best indicated by the following full extract from a recent critical study of self-determination:

"It still remains for us to ask, in general terms, within what limits the right of national self-determination in the form of independent small states can operate in contemporary conditions. National feeling is now so strong an element in the political consciousness of the world that no settlement which does violence on an extensive scale to this feeling is likely to be accepted except under irresistible pressure, or to survive any longer than it is backed by overwhelming force. The four great Allies could doubtless supply such force, but are they likely to co-operate peacefully in such a policy? There will certainly have to be force behind any settlement, but the course of wise statesmanship is to minimise rather than maximise the need for it. The Allies are bound, moreover, by the circumstances of the war to base the peace on a general recognition of the rights of nationality, including in many cases a re-establishment of political independence. Their acceptance of the general principle has been reinforced by specific engagements. Even a state of such doubtful validity as Albania has had its independence recognized by Great Britain, the United States, and the U. S. S. R. The second World War has given rise—and the fact is significant—to much less talk about rights of self-determination than the first; but the same problems of national independence will be posed at its conclusion.

For many nations, as we have said, political independence must be taken for granted. No one would challenge the principle in relation, for example, to the Belgians or the Swiss, the Turks or the Mexicans. Although in other cases independent statehood may be out of the question, all nations, or sub-nations, should exercise self-determination, within the limits of what is practicable, in the form

⁶⁵ *International Conciliation*, September 1945, p. 444.

of regional autonomy. The first problem of a new international settlement, therefore, is the identification of communities, either national or regional, with a separate political consciousness of their own. Wherever the existence of a separate national community is in serious dispute the most logical method of solving the question is by popular vote. The plebiscite is admittedly a difficult instrument of international policy, and experience has demonstrated that unless its application is surrounded with ample precautions, it is better not used at all. There is sufficient evidence to show that the plebiscite can be, though it rarely has been, employed satisfactorily."⁶⁶

SELF-DETERMINATION AND SECESSION

A distinction has, of course, to be drawn between self-determination and the right of secession. The right of secession does not necessarily follow the claim to self-determination. Even at the end of the war of 1914-18, when the principle enjoyed exceptional popularity, "there was no serious suggestion that all over the world there should be a breaking up of allegiances, followed by a series of plebiscites to settle the new units of government," and "there was a fairly general understanding that the principle of 'self-determination' only applied to populations whose destiny had been actually disturbed and had to be determined one way or the other."⁶⁷

FUTURE INDIAN UNION AND NON-ACCESSION

A special committee of jurists set up by the League of Nations laid down that "generally speaking, the grant or refusal of the right to a portion of its population of determining its own political fate by a plebiscite or some other method is, exclusively, an attribute of the sovereignty of every state which is definitively constituted."⁶⁸ Can it, however, be said of the Indian Union of the future that it is a sovereign state definitively constituted? India is recognised today as an independent member of the international community. The status, the constitution, and the composition of this India are not to be continued. The Indian Union may differ from the existing political entity in every one of these aspects. The

⁶⁶ Alfred Cobban, *National Self-determination*, 1945, pp. 173-74.

⁶⁷ Prof. Gilbert Murray, quoted by S. Wambaugh, *Plebiscites Since the War*, Vol. I (1933), p. 488, foot-note.

⁶⁸ *Ibid.* p. 489.

Indian States form today an integral part of India as a member of the international community. The Cabinet Delegation's proposals treat them and they—147 of them—claim for themselves the status of potential independent sovereign units. India of today, whether in Indian States territory or under the British, must be treated as consisting of populations whose destiny has been disturbed. We are in a process of reconstitution and cannot, therefore, plead the right of a sovereign state to grant or refuse self-determination to its subjects. The Cabinet proposals confer the right of non-accession to the Indian Union on 147 Indian States, the large majority of whom are smaller in size and resource than an average district in British India; the proposals also contemplate the possibility of secession by Provinces at the end of a ten-year period. The Congress accepts these provisions and yet shrinks from frankly accepting non-accession for Provinces, if they demand it. The position is obviously indefensible.

RESULTS OF FORCED UNION

It is not only indefensible in theory but also highly undesirable in practice. The consequences of the formation of a Union which the Muslims do not frankly accept as a long-term fact and in which homogeneous autonomous units and sub-units are not properly formed, are likely to be very serious, especially in Groups B and C. If the Muslims are compelled by force of circumstances to accept against their wishes a Union, they "will constantly keep in view the opportunity and the right of the secession of Provinces or Groups from the Union which have been provided in the Mission's plan by implication."⁹⁹ They will steadily work for secession at the end of ten years in all Provinces and Groups which they control and they will do everything in their power to see that they secede with the largest possible area. With this end in view, they will attempt to spread Muslim influence and Muslim populations in areas within Groups B and C where they are not dominant today.

DANGER IN THE EASTERN ZONE

In Group B these moves may not meet with much success because the non-Muslim region directly bordering the Muslim-majority area in the Panjab is the Sikh region. This is already heavily populated and has a tradition of strong and effective opposition to Mus-

⁹⁹ Resolution of the Muslim League Council, June 6, 1946.

lims. The position is different in Group C. The Muslims of East Bengal are growing at a much faster rate than the Hindus of either West Bengal or of Assam. The infiltration of Assam by Bengal Muslims is already advanced and could proceed very much farther in another decade. The opportunities open to a government for influencing appropriate population movements are many and already Bengal Hindus are reading a sinister meaning into the move of the Bengal Government at settling Bihar Muslims in West Bengal. To give Muslims the right of non-accession and to ask them to stay away from the Union today, might, in the circumstances, prove to have been much the wiser course. Today they could demand only the areas where they are in actual majority, and their non-accession will enable the reconstituted Assam and Hindu Bengal to take vigorous action which will effectively stop the extension of Muslim influences within their areas. For Assam in particular, and to some districts of West Bengal, the unwilling accession of Muslims to an Indian Union is fraught with grave danger. Today, it would be possible to force the Muslims to secede, if they insist, only with Muslim Bengal as the Eastern Pakistan. Ten years after the functioning of the Union, the boundaries of the Muslim eastern zone will have widened. Also today the Hindus in the other Provinces and in the Centre will be able to resist the incorporation of Assam in Pakistan; it is highly doubtful whether the weak Government of the Indian Union with half the complement of armed forces belonging to Muslim regions will, ten years after its formation, be equally powerful to resist Muslim secession and Muslim insistence on including non-Muslim territory like Assam in the seceding area.

XII. CONGRESS, PAKISTAN AND CONSTITUENT ASSEMBLY

ALTERNATIVE POSSIBILITIES

The chances of a peaceful progress towards a political settlement in India depend on whether or not the Congress accepts, frankly and openly, the right of Muslims to self-determination. The possibilities of political development visualised in a preceding section are: (i) The Muslim League may join the Constituent Assembly and the work of constitution-making may proceed as contemplated by the Cabinet Delegation, or (ii) The League may refuse to enter the Constituent Assembly and ask the British for a revision of the settlement, involving practically an admission of the principle of Pakistan. In the latter event either (a) the British may refuse

the demand of the League and precipitate trouble amongst Muslims and the Muslim Provinces, or (b) the British may agree and this might lead to political trouble in the Congress and Hindu Provinces. Even when the trouble is put down by force and some constitutional patch-work formed, the fundamental situation will remain unsteady and Hindu-Muslim tension will continue. There may be peace in this country and the barest essential conditions of political and economic progress established only when either (i) the Muslims frankly accept an Indian Union, or (ii) the Hindus frankly accept the Muslim claim to separation. Failing both of these, a regime based mainly on force will be kept up and, in consequence, British hegemony will be assured.

MUSLIM LEAGUE ACCEPTANCE OF UNION

The Muslim League cannot be said ever to have frankly and fully accepted an Indian Union. In its resolution of June 10, 1946, in which it is said to have accepted the statement of 16th May, 1946, the League merely expressed its willingness "to co-operate with the constitution-making machinery proposed in the scheme outlined by the Mission in the hope that it would ultimately result in the establishment of complete sovereign Pakistan." It also clearly stated that "the ultimate attitude of the Muslim League will depend on the final outcome of the labours of the constitution-making body" and reserved its right to modify and revise its policy and attitude at any time during the progress of deliberations of the constitution-making body. It may be argued that this acceptance is not conditional because the reference to Pakistan does not involve the immediate work of the Constituent Assembly, but has relation only to the right of secession of Provinces and Groups to which specific reference is made later in the resolution. Even so the last clauses of the resolution indicate definite reservations which affect the quality of the acceptance of the proposals of the Delegation. The difference between this resolution of the League and that of the A. I. C. C. of 6th January, 1947, is only one of degree. While the A. I. C. C. refers to specific parts of the proposals and to specific contingencies and makes reservations regarding them, the League takes a generally cautious attitude regarding the whole work of the Constituent Assembly. The acceptance of the Indian Union by the Muslims was thus far from frank. And this temporary acceptance, such as it was, was dependent on a rigid interpretation and strict application of the provisions of the statement of 16th May, 1946.

The Congress lost the opportunity of forcing the Muslims to keep in with the acceptance of the Union by its legalistic approach to the problems of interpretation and procedure. It would find it difficult to retrieve the position now and must, therefore, face the problem of partition. We may at this stage summarise the results of our discussion of the possibilities of constitution-making on the basis of the Delegation's statement and see to what extent and in what manner this is preferable to a partition of India. We can then go on to consider the obstacles in the way of the Congress frankly admitting the principle of self-determination and the consequences that would flow from such admission.

CHARACTERISTICS OF THE MISSION'S SETTLEMENT

The Government of an Indian Union set up according to the provisions of the Delegation's plan will be restricted in its scope and weak in strength. It will not be in a position to undertake any effective co-ordination of planning during peace-time. Its powers under defence will be wide only during war. It was the intention of the Cabinet Delegation to achieve such political separation of normal peace-time activities from those essential to maintaining merely a unity in defence and external affairs. The Delegation had definitely set before itself this aim because it was convinced "that if there is to be internal peace in India, it must be secured by measures which will assure to the Muslims a control in all matters vital to their culture, religion, and economic or other interests." "A Union which was so limited in activities during peace could not but be weak in war. The essential powers to maintain reserves, to plan the co-ordination of the development of industry and manufacture, and be prepared for every type of contingency, would not be available to the Union Government and the Indian Union would necessarily depend on outside help for any effective action in a world conflagration. In external affairs, unity of direction would be severely limited by the freedom of independent action retained by Groups and Provinces.

ADVANTAGES OF THE MISSION'S PLAN

The advantages flowing from the Cabinet Mission's Plan are important. The plan helps to maintain a kind of unity over the area as a whole, and it leaves open the possibility of one party or community influencing the other by a slow process of adjustment

of relations. It might be that this would lead to a betterment of relations between the two communities, and ultimately to a closer Union than is immediately possible. The importance of this consideration would depend greatly on one's estimation of the state of the existing relations between the communities, and the manner in which they are likely to shape during the first decade in a Union Government.

More particularly the advantages of a Union are appreciable to the Panjab and Bengal. A partition of India means the partition of the Panjab and Bengal. To Assam the loss of Sylhet and other Bengali Muslim regions would not appear as involving a partition, it should rather appear in the light of a welcome relief. To no other province or linguistic or cultural group in India would a partition of India mean severing of vital ties. Sind and the N. W. F. Province in the Muslim area and all the dominantly Hindu Provinces would not directly suffer from the partition. To the Panjab and Bengal, however, the partition cuts right across essential loyalties. If a Union succeeds in avoiding this and yet giving the Bengali Hindu and the Panjab Sikh and Hindu a fair deal, it might be agreed to by the other Hindu Provinces in spite of its obvious defects and shortcomings. But whether the latter aim is achieved or not depends on whether the Muslims agree to a creation of autonomous sub-units within Bengal or the Panjab. If they do not agree to this, it might, in the long run, be preferable for the Bengal and Panjab non-Muslims to suffer the wrench of partition immediately than to look forward indefinitely to a political future perhaps worse than their political condition during the recent past.

The keeping up of a Union has also the major advantage of avoiding the large number of difficulties which are attendant on any scheme of partition. The settlement of frontiers, the division of resources and of liabilities, treaties and conventions regarding communications, customs, etc. which will consume time and may try tempers, could all be avoided, and this is an advantage which is not to be treated lightly.

CONDITIONS REQUISITE FOR FULFILMENT

A Union could, however, be secured only if it is possible to work in the Constituent Assembly at constitution-making with agreement and co-operation. This would happen if, on the one hand, the Congress recedes all the way from the extreme position taken

by Pandit Nehru in his fateful interview to the press on July 10, 1946, and if the Muslim League is able to moderate its demands to reach a workable compromise. This would mean that the Congress should not only give up its opposition to the Group idea, but also work it whole-heartedly as an essential part of the structure of the Indian Union. It would accept a Group Government for Group A and also induce Assam, provided it is suitably reconstituted, to remain in Group C and work both Groups B and C, making a demand for the creation of autonomous non-Muslim majority units within them. It also means that the Congress goes some way toward meeting the Muslim demand for parity of representation in the Union Legislature between Group A and Groups B and C together; and that it does not make a fetish of its dislike of separate electorates. On the other hand, to achieve a fair and workable compromise, it would be necessary that the Muslim League should not press its demand for a guarantee of parity, communal or regional, to be provided for in the constitution for either the Executive or the services of the Union. An approach in this manner by both parties may give a constitution and a Union Government which, though weak in power and limited in sphere, maintain an essential form of unity which, whatever may be said about it, is after all invested with great emotional content for a vast majority of Hindus.

CHANCES OF SUCCESS

What are the chances that such a Union will in actual fact be achieved? They must, at this stage, be reckoned very slender. It is obvious that there is readiness neither on the part of Congress nor on that of the Muslim League to adopt attitudes and make concessions necessary for such settlement. The Congress leaders and the Hindu Press have at the very outset of the constitution-making process made such impossible claims for the Constituent Assembly and built such fantastic notions relating to the constitutional structure that could be built on the basis of the Delegation's proposals that they would now find it very difficult to retreat all the way. The assurances given to the Sikhs and the Assamese and the public declarations made in their behalf must also be counted as major obstacles in the path of retreat. It may be that following the pattern of Hindu-Muslim relations in the past, the Congress leaders might make a series of concessions, giving up one position at a time and leading them ultimately to beyond even what has been taken as reasonable above. The process, however, would be so long and the

disputations so continuous that a settlement reached in this way would, in the meanwhile, lead not to opening a new chapter in Hindu-Muslim relations, but to leaving them even more strained than before.

As regards the Muslim League, there is no overt indication whatever that it desires to reach an amicable settlement and to find a stable position of equilibrium within the framework provided by the Cabinet Delegation. Muslim leadership remains firmly rooted in its faith in Pakistan and the cumulative effects of its insistent demand for Pakistan among Muslim masses may be such that it will be unable to give up the demand, even if it later desires to do so. The Muslim League has so far not been dislodged from any of its positions, and the only major reverse suffered by it, that at the time of the formation of the Interim Government and its entry into it, was the result of an altogether unusual combination of the Congress and Hindus with the British. It is not likely that even if it enters the Constituent Assembly it will moderate its demands or make only a reasonable use of the device of communal majority. Therefore, a workable solution which would give a constitution which the Hindus might accept even with reluctance seems beyond the reach of actuality. Whether the Muslim League enters the Constituent Assembly or not, the demands of Muslims will be pitched high and adjustment with them would be found impossible.

HINDU REACTION TO PARTITION DEMAND

It is one of the most surprising facts in political history that Hindu organisations should have failed to recognise the great potential change for the better effected in the Indian situation by the formal demand made by the League for an independent Muslim State. In the absence of this demand no way was possible out of any deadlock in Hindu-Muslim relations. It was then the double problem as described recently by Sir Stafford Cripps, "The time has come when we want to hand over power to the Indian people; the difficulty is how to accomplish that objective. There are two principles, both of which are democratically sound, but which it is very hard to match together in a single process. The first is the right of a majority to determine its own future without any veto or prohibition from any minority; and the second is the right of minorities to enjoy freedom, and a full voice in the determination of their own future without suppression by the majority."

In such a situation if either the majority or the minority or both are unreasonable, the deadlock can be resolved only by one party forcing its opinion on the other, either by political tactics or physical violence, or ultimately a position is reached where intervention of an outside power becomes necessary and has to be invited. The last was the invariable result at each earlier stage of India's constitutional advance in the past; and the British each time performed the office of final arbiter. The demand for Pakistan created an entirely different situation. It offered a solution in which instead of talking in terms of the majorities and minorities of a single area, it is possible to talk of two areas each with a separate majority of its own and the solution to the minority problem in each area could be comparatively easily given by negotiations between the two separate areas. The Hindus, at least, should have welcomed this approach; for it provided them with an alternative which was totally lacking previously. Now that the Muslims themselves had put forward the concept of a state consisting of areas in which the Muslims were numerically dominant, the Hindus could always balance all Muslim demands as against the final solution of partition. When no such solution was available, Muslim demands could be pushed higher and higher almost without limit. Now, it is possible to weigh each level of Muslim demands as against the alternative of partition. A partition thus offers a remedy, however desperate, to an otherwise incurable disease. It must also be considered whether the Hindus can legitimately and effectively resist the demand.

INDIA: A SINGLE NATIONAL COMMUNITY

"Any state which could not persuade its people to regard themselves as a single national community and so become a nation state must lose its cohesion and its diverse elements fly apart."⁷⁰

So opines a careful student of the formation of new states in the recent past. Can it any longer be maintained that the Indian State can persuade its people to regard themselves as a single national community? The claim might be admitted on behalf of all non-Muslim communities residing in India; it would be patently wrong to make it on behalf of the Muslims. The Cabinet Delegation noted that outside the supporters of the Muslim League there was an almost universal desire for the maintenance of the Unity of India. Surely, with reference to the Muslim claim for Pakistan, it

⁷⁰ A. Cobban, *op. cit.*, p. 6.

is the desire among Muslims and not among non-Muslims that is properly relevant. The Muslim League, whose supporters are opposed to the Union of India, has as a result of the elections become "the authoritative representative organisation of an overwhelming majority of the Muslims of India, and that as such and in accordance with democratic principles, they have today the unquestionable right to represent the Muslims of India." This is a claim that the highest leaders amongst the Congress find themselves constrained to admit. If this is so, the demand for partition made by the Muslim League must be considered as the demand on the part of the Muslims of India.

OPPOSITION TO MUSLIM DEMAND

What is the ground except that of possession of force or of a politically superior position that can be urged against this demand? If the British had not supported the Congress in its insistence on the maintenance of an Indian Union, such insistence would have had little concrete results and if carried far, could have led only to physical violence within the country itself; and whatever the ultimate result of the struggle, the settlement after it would have contained no guarantee of enduring peace. In this connection, a detailed examination might be made of the resolution passed by the Congress on the Cripps' proposals enumerating the objections of the Congress to partition. The relevant paragraph in this resolution has been quoted above.¹¹

CONGRESS OBJECTIONS EXAMINED

Firstly, it is noted that the principle of non-accession is likely to create trouble in the provinces, and may lead to difficulties in the matter of Indian States joining the Indian Union; next, a partition would be injurious to all and, therefore, every effort should be made to create conditions which would help a common and co-operative national life; further, such a proposal at the inception of a Union would create friction just when good-will is most needed, and lastly, the proposal made to meet a communal demand would encourage other reactionary elements. The Working Committee of the Congress was, at the same time, clear that it could not think in terms of compelling the people in any region to remain in the Indian Union against their established will.

¹¹Page 146 Supra.

It would be useful to examine each of these points. Firstly, if the fear of growing trouble in the provinces refers to demands for secession, this may be ruled out in existing circumstances in relation to the Hindu Provinces. With regard to the Indian States, on the other hand, the Delegation's proposals, which the Congress has accepted, give the fullest power of non-accession to each separate individual State. No concessions to Muslims can now affect the position relating to Indian States. As regards encouragement to other reactionary groups, the dominance enjoyed by the Congress in the present political world takes away the ground for this apprehension. No Hindu Province and no non-Muslim community, except perhaps the Sikhs, are likely to take a stand other than that dictated by the Congress because of any right of non-accession given in satisfaction of Muslim demands. As regards the desirability of making efforts which would create conditions for developing common and co-operative life, even the greatest optimist must admit that the present is not a suitable time and offers no opportunity for such effort. Whatever efforts, consistent with their own political principles, could be made by the Congress and other non-Muslim parties or persons for gaining the co-operation of Muslims and their assistance in building a common national life, have been made and have so far failed signally. In view of this there could no longer be any justification for the Congress to think in terms of compelling the people of Muslim regions to remain in the Indian Union; no justification, that is, for denying the right of non-accession to units such as Sind and the Muslim parts of the Panjab and Bengal, which have by the votes cast for the Muslim League sufficiently established and declared their will. The Working Committee's resolution of April 1942 can no longer stand in the way. The Allahabad resolution of May 1942, may be ignored as indicating not the balanced view of the organisation, but the result of a temporary dominance of the Hindu Mahasabha ideology.

It is clear that a careful review of the situation today in terms of the resolutions passed by themselves formerly should convince Congress leaders that they cannot continue to deny the right of non-accession to Muslim territories. They cannot do so because, fundamentally, the determined will of large regions like those inhabited by the Muslims cannot justly or safely be ignored. The Congress can also now claim that it has done all that was possible for the maintenance of the Indian Union, that the other apprehensions formerly expressed by it in connection with non-accession are either

no longer justified or independently established as facts, and that the trend of Muslim opinion has in every way unmistakably declared itself. Even more important is the consideration that such an admission of the claim to self-determination on the part of the Muslims will lead to a restoration of freedom of political action to the Congress and materially lessen its obvious dependence today on British reactions and support. It would be possible to come to an independent settlement with Muslims with the offer to Muslim regions of the right of non-accession. Such an offer would be in the nature of a peace offering and a measure for the improvement of relations.

It might be objected that this is very much less than what the Muslim League expects and this offer would, instead of placating the League, whet its appetite still more. It is necessary to deal in brief with this objection. The announcement on the part of the Congress that it concedes fully the right of the people in any territory to determine whether they shall be parts of the Indian Union or not may not be sufficient to placate the Muslims immediately. They will, according to their avowed programme, try and obtain as large an area as possible in the North-West and the East under their control and include it in Pakistan. The approach indicated here is, however, not that of appeasing the Muslims at any cost. Any party or people which is bent on avoiding struggle at all costs must, in existing political circumstances, give up all. A party prepared to make a fight must also, however, choose carefully the ground on which it is to fight. The claim of Hindus to include territories with Muslim majorities in the Indian Union in opposition to the expressed wishes of the people of those territories, is untenable. It is untenable by all canons and standards of modern political thought. It is also untenable as a fact. Neither the Congress nor the Hindus command sufficient military resources to keep, by force, the Muslim regions in the Indian Union. They must have the assistance of the British if this effort is to succeed. The British will most probably not agree. And even if they were likely to agree, in the long run the results of such an enterprise are bound to be wholly bad. It is entirely different with resisting the claims of the Muslims to include more in Pakistan than the definite Muslim majority region. In resisting this claim and in fighting on this ground the Congress and the Hindus would be fully justified and be more sure of success.

UNIVERSAL SELF-DETERMINATION

Once the principle of self-determination in the formation of the Indian Union is freely admitted, the application of that principle will be universal. The right appertains to all the regions and not to Muslims or Muslim regions alone. The self-determination that Muslims would like to exercise will be matched by an equal degree of self-determination on the part of non-Muslims—Hindus, Sikhs, etc. All areas which would like to be included in Pakistan would be free to become parts of it, but no area of which the majority of inhabitants do not desire such inclusion will be forced into it. The argument of administrative convenience or economic necessity will, in this context, be completely out of court.

CLAIM TO INCLUDE NON-MUSLIM AREAS IN PAKISTAN

In consideration of the formation of national units and in the determination of frontiers between states, the territory is fought over by inches and no state feels bound to give up any part of its territories and resources or hand over the fortunes of any of its subjects to another in order to suit the convenience or increase the strength of that state. Indeed, on the very principle of self-determination a state cannot well do so; for no state has the right to transfer to another power the political allegiance of any of its members who resist such transfer. Especially in the claim to Pakistan, considerations of convenience can have no place. The claim to Pakistan is a claim which is being enforced and fought for against the wishes of almost all non-Muslims. Again, it is a claim justified on the evident impossibility of Muslims living side by side with Hindus in one state, and being able to evolve a common national life. For any Hindus or Sikhs to be forced into Pakistan in order to make it administratively and economically workable is a sacrifice which no Muslim can fairly ask of them. Therefore, Pakistan is possible only for the area in which Muslims are demonstrably in the majority and cannot at all extend beyond it.

The declaration of the readiness to admit of the possibility of the formation of a Pakistan of this character will in effect be no special concession to Muslims. It will be a recognition with special reference to Muslims of what, after all, is a concomitant of the process of constitution-making today. The Indian Union is a state in the process of formation. It is to be a federation of a series of

homogeneous federating units, which when they form the Union must be supposed to have the right of freely deciding to join the Union or abstaining from joining it. The right of non-accession of autonomous groups is a fundamental part of the proper formation of a Union. The possibility of Pakistan is merely a result that might flow from the acceptance of this general principle.

MUSLIM REACTIONS TO OFFER OF SELF-DETERMINATION

There is little doubt that a frank acceptance on the part of the Congress of this position will immediately clear the political atmosphere immensely. It will then be possible to challenge the Muslim claim and ask them to prove it. It may have a series of possible results. The Muslims may opt for the smaller Pakistan and may form an independent or two independent state units by themselves. This is what they are perfectly entitled to do. Alternatively, the Muslims may insist on non-Muslim areas being joined to the smaller Pakistan. In this case the matter will become one for bargaining. If the Muslims contend that their areas on the North-West and in the East cannot function without being joined to other contiguous non-Muslim areas, such a union for the convenience of the Muslims can only be the result of an agreement and a bargain. It would then be possible for the Congress to offer the constitution of larger units in the East and the North-West only if the Muslim regions promise definite accession to the Indian Union and guarantee proper safeguards for the non-Muslim regions joined together with the Muslim areas.

BASIS OF DURABLE UNION

An Indian Union formed by this measure would be a Union formed because the Muslims recognise that membership of it subserves their interest as well as the interests of non-Muslims. If the Muslims really wish for the larger Pakistan, that is a sizable unit of autonomous territory, they will be willing to pay the price demanded for the association of non-Muslims in forming this territory. If they are unwilling to pay the price, they could have their smaller Pakistan and refuse to form a Union. The offer of self-determination and a smaller Pakistan will thus become not a mere act of appeasement but a constructive step which would open a field for negotiation. An Indian Union which is the outcome of a British award and against which Muslims would perpetually protest and

fight is hardly desirable. A Union will be worth having only if the Muslims recognise that its formation is as much in their interest as that of the Hindus and other non-Muslims. Lastly, of course, the possibility must be envisaged that the Muslims would agree neither to accept the smaller Pakistan nor to bargain for coming into the Indian Union, but want to fight for the inclusion of the non-Muslim areas into Pakistan. In this event the non-Muslims could stoutly resist the claim, for, in this event, the Muslims would clearly be the aggressors and the non-Muslims would be doing no more than protecting their homelands. Such a fight, without intervention of a third party, could be carried on on fair terms, with a clear conscience and with all prospects of success.

It must be confessed that there is little likelihood that Congress leaders will adopt the course suggested above. They may be driven gradually by circumstances towards the position indicated, but they will not, of their own accord, adopt it, and will not reap any advantages of good-will, etc., flowing out of its voluntary acceptance. They are most likely, instead, to explore the method of working the Constituent Assembly, in spite of the absence of the members of the Muslim League. It appears that Congress leaders will attempt to frame a constitution in this Constituent Assembly and then ask the British government to implement it for the whole of India. In the light, especially, of the statement of 6th December, 1946, it is highly unlikely that the British will accept the constitution prepared by such an Assembly as applicable to the whole of India. "This is perhaps a statement of the obvious, that if the Muslim League cannot be persuaded to come into the Constituent Assembly, then the parts of the country where they are in a majority cannot be held to be bound by the results."⁷² That is, they would, in effect grant the smaller Pakistan. Is there any merit in reaching the result in this indirect manner? It is difficult to discern any. An offer of the smaller Pakistan made by the Congress may be rejected. But there is always a chance that such an offer may lead to negotiations and agreement and nothing would be lost by it. Morally and technically a point will, in any event, have been gained. A smaller Pakistan, given by the British ultimately, will mean a steady worsening of relations through the period of the work of the Constituent Assembly and a continuous manœuvring for positions in the Centre and in the Provinces in the intervening period. Each party will inevitably

⁷² Sir Stafford Cripps, 12th December, 1946, House of Commons, *Hansard*, Vol. 43.

look to the British for support, and will gain what it will chiefly through their instrumentality. And the relations of the two new states, as a result of all this, will start at a much less friendly level than is necessary. The persistence of the Congress in working the present Constituent Assembly cannot avoid the partition of India, if the Muslims insist on it.

However, this is not all. It is not only that the Constituent Assembly would not be able to maintain unity and that there would be grave risks during the intervening period, but it might also lead to wholly inappropriate results. The work of the Constituent Assembly is likely to be built on a basis that would be unsuitable to a divided India, and its work would either have to be done all over again, or would be found constantly to hamper future functioning and development of the Constitution. As long as the Congress does not admit the right of the Muslim Provinces to non-accession, it must proceed on the basis of a Union for the whole of India, and if there is the intention of asking the British to implement the constitution for the whole of India, it must be framed within the limits of the statement of May 16, 1946. The whole work of the Constituent Assembly will then be done within the narrow limitations laid down by that statement. Also, there will be the urge to show to the British and the world that in spite of the absence of the Muslims, their interests have been fully safeguarded. The Muslim League outside the Constituent Assembly will be able to influence the political structure shaped within it as fully as if it had actively participated in the work. There is every chance that the influence through absence will be even greater. A report has appeared that the vital question of the reconstitution of Provinces has been shelved because of the fear of affording further excuse to Muslims to justify their abstention. A Constitution prepared in such a frame of mind will obviously be completely out of relation to the realities that it must provide for in the future. In all probability, this Constitution framed for a Union, framed within the framework of the Delegation's proposals and intended to meet all potential Muslim objections, will have to serve a federation of non-Muslim areas. The needs of such a federation will be strikingly different from the requirements of the Indian Union and will be ill-served by a Union constitution.

On the grounds that the method is indirect and risky and would yield inappropriate results, constitution-making through the Constituent Assembly should not be attempted, in case the Muslims refuse

to participate in it. The Delegation's proposals have to be set aside if the Muslims do not participate in the Constituent Assembly and a fresh start must be made in the work of political settlement. It may, however, be that Congress leaders may rule out completely the method of negotiation with members of the Muslim League. They may maintain that their experience of previous negotiations is disappointing and nothing can be expected to come out of attempts at parleys with Muslim leaders. The political future must be worked out by independent action on the part of the Congress itself. To meet this point of view, a way may be found through the work of the Constituent Assembly; but, for this, the whole approach to it must be different from the present approach. When relations between two communities have reached such a pass that their leaders cannot even think of meeting to negotiate a political settlement, it is futile to think in terms of a united nation. The case for partition is complete. If the Constituent Assembly is to work in these circumstances, it should frankly recognise the facts and the logic of its composition. It is a non-Muslim body and could, therefore, function appropriately for only the non-Muslim areas. Also, in the changed context, the limitations of the statement of May 16, 1946, are no longer binding on it. We have seen above how almost every feature of the proposals of the Delegation originated in Hindu-Muslim differences. If the Muslims do not participate, the provisions arising out of the need for their co-operation cease to be necessary or even relevant. The task of the Constituent Assembly must be conceived as that of constructing a federal constitution for the non-Muslim areas of India. It can proceed on lines substantially similar to those discussed previously. The formation of the homogeneous federating units, the gradations and the adjustment of the position of the Indian States, the safeguarding of minority and special community rights can proceed on normal lines. The main structure of the federation and the powers enjoyed by it will, however, be widely different. The Constituent Assembly for the non-Muslim areas, now fully sovereign, can do its work completely independently of the provisions and the procedures of the statement of the Delegation. Whatever it does is likely to be accepted by the British for the non-Muslim areas. Such an approach, though it has some disadvantages as compared with the one indicated initially, will still be a realistic approach and might lead to useful practical results. It will also result in the smaller Pakistan; it will lead to this through consolidating non-Muslim India. By the participation of the non-Muslims of Bengal and the Panjab in the work of constitution-making

it will force the issue of the partition of these provinces, and by defining the new non-Muslim units it will force the implementation of that partition on the British. In a previous publication, *Federating India*, it was suggested that in case the Muslims were obstructive, a deadlock could still be avoided by insisting on proceeding with the formation of a state for non-Muslim India. The Constituent Assembly can be used for this purpose, and if the way of the Constituent Assembly is to be pursued, it can be usefully pursued only with this aim and in this manner.

XIII. CONSTITUENT ASSEMBLY AND INDIAN STATES

The most important aspect of the constitutional task faced by Indians today is that relating to the demand for Pakistan. The second most important problem is that of the relation of the Indian States to the project of an Indian Union, and this is being dealt with, at present, by Congress representatives in the Constituent Assembly.

DEMANDS OF RULERS

The position that the Indian States adopt on this question has been made clear by the resolution recently passed by the Council of Rulers giving a directive to their Negotiating Committee. The Indian States insist on their territorial integrity and their dynastic succession, and they are not prepared to discuss the question of internal rule and constitution with any external body or authority. In no case are they prepared to cede to the Union powers larger than those specifically mentioned by the Cabinet Mission. There is even no guarantee today that they will all accede and cede these powers; we are told that this will be for each individual Indian State to decide after the full picture of the constitution of the Indian Union emerges from out of the labours of the Constituent Assembly. The Negotiating Committee set up by the Indian States will discuss with the Negotiating Committee of the Constituent Assembly only the question of the manner in which the representation of the Indian States in the Assembly should be made up. It will not even discuss the distribution among the various Indian States of the maximum representation given by the Delegation.

ASSOCIATION OF PEOPLES IN GOVERNMENT: UNIONS OF INDIAN STATES

In the meanwhile, individual rulers are introducing measures

for associating popular representatives with themselves in the Government of the Indian States; there is not only no uniformity in the method or the scope of these measures but there is, on the contrary, the utmost diversity among them. In a few Indian States popular government is almost an actuality; in the vast majority the pretence at the association of popular representatives is a pitiful farce. In many areas attempts are also being made at forming Unions of Indian States for exercising powers and dealing with subjects in common. No schemes for such Unions have gone beyond the stage of deliberation, and the outlines of the proposed schemes do not betray any effort at constructive integration of homogeneous units such as would have enduring validity. The basis of these Unions appears to be the jurisdiction of Political Agencies as they exist to-day. A Union is proposed, for example, for States in Western India and Central India which will embrace within it a large number of disparate territorial units stretching from Jaujira to Jaisalmer and from Dwarka to Dholpur, and include speakers of Marathi, Gujarati, Rajsthani and Hindi. Most proposed Unions will consist of speakers of diverse languages having no bond of history, traditions or sentiments in common; they will not even be all subjects of a particular dynasty. The only fact of political significance in common with all will be their being subjects of Indian States. The territory comprised in the Unions will not form compact blocks, and will in most cases be composed of widely dispersed units of varying sizes. Administration in any of its aspects will be neither economical nor efficient for such a Union, and it will entail considerable inconvenience to the subjects thereof. The natural and the geographical features of the territories will be diverse and they will not form together a unit of economic planning. The formation of these Unions is thus open to all the objections which led the Crown Representative to reject the possible alternatives before finally deciding upon the attachment of small Indian States to large Indian States. The formation of Unions in the way proposed will result in neither political cohesion nor administrative efficiency nor economy of resources. Its sole object seems to be that of appearing to have met the advice of the Cabinet Delegation to form larger administrative units.

RULERS' TERMS UNACCEPTABLE

It is obvious that so long as the limitations indicated by the present actions and expressions of the Indian States persist, there

will be little use in negotiating with them. Unless the Rulers of the Indian States are prepared to travel much further, their co-operation in the formation of the Indian Union is not likely to be worth while; it is likely to prove, on the contrary, obstructive to future progress. Before proceeding further, the difference in the process by which an Indian Union is sought to be formed today and that by which a federation was to be formed by the Act of 1935 must be made clear. The accession of Indian States to the Federation, under the Act of 1935, was provided for unilaterally; that is, the federation itself had no authority or power in relation to the accession or the terms of such accession at the time of the formation of the federation or for twenty years thereafter. The accession was complete on His Majesty the King Emperor signifying his acceptance of a Ruler's Instrument of Accession. Twenty years after the formation of the federation it would have been necessary for the acceptance of the accession that it should be supported by an address of each Chamber of the Federal Legislature. This unilateralism has disappeared, as also has the former liberty given to Indian States relating to the subjects in respect of which they could accede. The subjects to be ceded by all Indian States are the same and they are the same as those ceded by the Provinces. Uniformity of status has been attained between the two. The Indian States, however, enjoy the power of non-accession which the Provinces do not possess. The corollary of this power of non-accession is obviously the power vesting in the Union of non-acceptance of accession.

NON-ACCESSION AND NON-ACCEPTANCE

The Delegation's proposals do not bind the Indian States to join the Union and they leave entirely undecided the precise form which their co-operation with the Union will take. The latter is to be a matter of negotiation. In the field of negotiation it is for each party to make or modify offers and terms and decide finally which terms, if any, are acceptable. And just as each individual Indian State will decide whether it shall accede or not, on the emergence of the final picture, so will the terms proposed by the Union Assembly for the accession of each Indian State be liable to vary with the circumstances of the individual Indian State. It is only a matter of convenience that the Indian States are represented by a joint Negotiating Committee in the earlier stages; the final settlement of the terms of the accession of each Indian State, in the same way as the accession itself, will be a matter between the

Union and the individual Indian State. The terms may, of course, not vary with each individual Indian State, but may vary only with categories of Indian States and there may be gradations of status and terms formed to suit each grade. But this again will be a matter of convenience and according to the requirements of rational action and reasonable procedure. The basis for all the variations is provided by the right of non-acceptance of any unit by the Union.

TERMS TO BE OFFERED BY CONSTITUENT ASSEMBLY

A possible and reasonable scheme of the gradation of Indian States has been indicated above. (See Section V.) Almost any such scheme will make it necessary for the Union to say to a large number of Indian States that their existence as separate political entities within the Union will be impossible; for becoming a part of the Union, they would have to merge themselves in the appropriate federating unit. To other Indian States it would be necessary to indicate the appropriate political status and the appropriate position in the scheme of regional organization which would be assigned to them in the Union. All Indian States which are unable to agree to the terms offered by the Union will, of course, have the liberty of exercising their right of non-accession.

POSSIBLE RESULTS OF SUCH OFFER

It might be objected that, if the Union Assembly adopts this policy, a large number of Indian States may not accede, and the resulting situation will be chaotic. The possibilities of non-accession must be considered and the risk that a number of Indian States may not accede will have to be balanced against the results of admitting the Indian States to the Union on their own terms. The position of the Indian State which chooses not to merge itself with the territory of the Union, or not to accede to it on the terms offered, will be very different from the position at present held by the Indian States. On the one hand, the Indian States will be freed completely from the control of the paramount power and will be fully independent sovereign states. On the other hand, they will not be able to look to any help or assistance from any outside power to bolster up their political and economic strength. In these circumstances, whatever the wishes of the rulers, none of the smaller Indian States will be able to sustain an independent status or to oppose any wishes that their subjects may express regarding accession

to the Union. Only the biggest land-locked Indian States and a few specially placed maritime Indian States would find it possible to stand out for any length of time. And even if a fair number do not accede, the result will not be less desirable than that following from accepting the pretensions put forward on behalf of the Indian States today.

ACCESSION AND NON-ACCESSION BY INDIAN STATES COMPARED

We proceed on the basis that the terms offered by the Union reflect what is due to each Indian State in view of its economic resources and political conditions and what is necessary for bringing about a proper territorial re-organization. If the terms of the Union are not acceptable to any Indian State and it does not come in, the result is an awkward bit of independent territory, the problems created by which will have to be dealt with by the Union. This will lead to administrative inconvenience but to not much more. On the other hand, if an unsuitable status is given to an Indian State today, or it is linked with others in an unsuitable manner, this will incorporate into the Union an incurable defect which will give rise to perpetual problems. The first will be a cause of trouble which will be external and which, it may be hoped, will be curable if it is handled with tact and perseverance; the second will be a cause of organic and internal trouble, the remedy against which will be vastly more difficult to devise and apply. For, the very nature of the federation will stand in the way. A federal constitution, by virtue of the delicate internal balance it requires, is always a rigid constitution, and the greater this rigidity the greater is the number of forces required to be balanced at the outset. The status and position of units, once they are incorporated into a federation, could be changed with only the greatest difficulty. A change requires going through an elaborate procedure and a proposal for a change usually generates resistance because it is apt to affect many indirectly and to raise apprehensions in many more. Therefore, it is vastly more desirable that many Indian States are kept out at the time of the formation of the federation than that wrong concessions and arrangements are made which have large consequences for the future.

Moreover, the status and powers of Indian States which cede only the named powers to the Union will be large, being comparable, for purposes of internal administration, to those of independent

sovereign states. If the territory of a Province or that of a Group is studded with many Indian States with such powers, the administrative difficulties experienced by their governments will not be less than if the Indian States were to be completely independent. The Government of the Province, or the Group, and the Government of the Union will be able to exercise no influence over such Indian States in matters of internal administration. They will prove permanent foci of trouble for a large number of legislative and administrative measures. It will, in fact, be much more easy to deal firmly and effectively with all problems created by the existence of such Indian States if they are outside the Union altogether than if they are members of the Union enjoying full residual powers.

UNIONS OF INDIAN STATES

It will be worse still if the Indian States are allowed to come in groups of dispersed Indian States territory loosely held together in a formal tie, as is proposed to be done. There could be no better device for permanently rigidifying the existing situation. For, in this event, the smallest Indian State will get the backing of its group and will be entrenched for ever in its position. The group, on the other hand, will never be able to exercise effective authority over its members as it will never be geographically or politically in a position to do so. A Union of Indian Provinces or of even Hindu majority regions alone will be a vast state with immense resources. It will be the wisest course for such a potentially strong unit to wait and pursue a policy on the lines which built up the Zollverein. It should be in no hurry to work for the accession of Indian States to the Union on improper terms. It should lay down reasonable terms in an objective fashion and wait for its own strength and the advantages of being a member of the Union to tell and to bring about, first slowly, and then at a quickened pace, the right adjustments. The price of undue hurry now will be a legacy of a host of difficult problems for many future generations. If the Indian States are allowed to accede to Union on their own terms today, the Union will in effect do today what the British did during the nineteenth century. It will help to preserve inviolate, for a further indefinite time in the future, conditions which obtained at a particular historical period. Only, these conditions are today vastly more out-of-date than they were in the last century, and there is little or no justification in fact or in theory for attempting to perpetuate them.

TERRITORIAL INTEGRITY OF INDIAN STATES

For the same reason, the Union Assembly must resist strenuously the claim of the Indian States that their internal constitution is for them alone to decide. It is no part of the business of a Constituent Assembly of a federation to settle the constitution of the federating units. Usually, the federating units are pre-existent and already have definitive constitutions. It is the peculiarity of the Indian situation that for British India definitely constituted units do not pre-exist, and that is why provision has to be made for the settlement of provincial constitutions; that is also why, as has been argued above, the formation of proper federating units becomes an essential preliminary of the formation of the Indian Union. The Indian States already exist with pre-determined boundaries and, it might be claimed, self-determined constitutions. Can and need the Union Constituent Assembly interfere with these? The first question is whether the territorial integrity of each acceding unit is guaranteed by a federation. It has been noted above that the Weimar constitution fully endorsed the principle of the mobility of frontiers and reserved to the Central Government of the Reich the right of making adjustments in the boundaries of units when this was necessary to serve the national interests. In Russia, with its gradations of autonomous units, territorial boundaries are far from rigid. However, even if a federal government may not arrogate to itself the power to change the boundaries of the constituent units, there must be some provision for a change to be brought about by the consent of the units concerned. This is absolutely essential in view of the rapid development in communications and economic integration. A rigid guarantee of integrity is out of place; but if a change is to depend on the wishes of the unit, how are these wishes to be ascertained?

INTERNAL CONSTITUTION OF INDIAN STATES

This brings us to a consideration of the second and really most important issue. It is the grand question as to who are to be the constituent units of the Indian Union. On the one part, the units are the Provinces with democratic constitutions and governments, and on the other part there are the Indian States. Are the Indian States to be admitted as territorial units ruled by a given dynastic house and no more, or are they to be admitted as units of political government constituted in a regular and well defined democratic

form? A federation may not concern itself with the details of political arrangements in a constituent unit; it must, however, examine carefully the general category to which the government of a political unit belongs before accepting that unit into the federation. There are at least two important reasons why this must be done. In the first instance, the nature of a federation itself is determined by the nature of its constituent units; and for a political organization to cohere and to work, diversity in political forms could not be tolerated beyond a limit. The United Nations Organization recognizes this principle when it declares that it will not admit Fascist governments as members. The constitution of the U. S. A. contains a guarantee to every state of a republican form of government, and no state is likely to be admitted into the U. S. S. R. which does not accept the political and economic faith and forms of the Communist Party. The Swiss Constitution guarantees not only the constitution of the cantons, but also the civic rights of the inhabitants thereof.

POSSIBLE VARIETY OF POLITICAL FORMS IN A FEDERATION

Democratic popular government and dynastic personal rule are surely not compatible in one federal union. The aims of a dynastic ruler, whether domestic or foreign, are bound to be different from those of a democratic government, as also the methods by which they are pursued. A dynasty may be indigenous or foreign, and this will determine largely whether proper attention will be paid to the interests of the regions and those of its indigenous inhabitants by the government. The norms of values, the standards, and expectations of continuity in policy in dynastic rule will all differ widely from those in popular rule. In modern times federations over large and complex areas are possible because a measure of uniformity in constitutional forms ensures that all the units will be affected by, more or less, the same vogues in political ideology and the same waves in popular sentiment. Dynastic personal rule will make particular constituent units insensible to these general movements and thus make for considerable difficulty, especially in time of stress. Their representatives in the government of the Union will be bound by different loyalties and actuated by different motives from those of the representatives of democratic governments. The result may not only be an incompatibility of points of view and difficulty in mutual adjustment but, even worse, a grave danger of the popular branch suffering contamination because of the contact and

influence of the representatives of autocracy. The Indian States units may become the haven from which professional politicians, not representative of or responsible to any section of the people, could wield large and even sinister influence over the affairs of the Union.⁷³

UNION AND CONFLICT BETWEEN INDIAN STATES' RULERS AND PEOPLES

An equally important question arises out of the responsibility that a federation assumes on behalf of the constituent units. The sole responsibility for defence assumed by a federal government results logically in its controlling armed forces almost entirely. It would, indeed, be incompatible with a proper federal constitution that the constituent units should control such forces in any considerable measure. It would, especially, be most dangerous if within a federation there existed large armed forces owing allegiance to a particular dynastic house. The sole control over armed forces vests the federal government with responsibility in respect of internal order in case of grave emergencies throughout all the territories included in a federation. The maintenance of order in normal times would be entirely within the powers of the constituent unit and most federal constitutions provide for the intervention or use of the forces of the federal government only on a request made by the executive of the state or province concerned. The responsibility of the federal government is confined to helping the local executive to restore and maintain order in exceptional circumstances. A Union consisting partly of democratic governments and partly of governments of dynastic rulers would find itself in an awkward predicament in dealing with troubles due to popular movements in Indian States territory. The concepts fundamental to the one form of government would then clash with those fundamental to another. Such a Union could not function. Federation may be a useful device to accommodate diversity, it cannot marry incompatibility.

ANALOGY OF BRITISH TIMES

It would be wrong to argue about the incorporation of Indian States in the proposed Union of India from past experience during the regime of the British Crown. The two differ radically from each

⁷³ Cf. Wheare, *op. cit.*, p. 47.

other. In the past the Indian States have not at all been an integral part of the British Indian Government. The British Indian Government and the Indian States have only had this connection, that the head of the one and the representative of the British Crown in relation to the other had been the same. The British Government itself has no rights and responsibilities in respect of the Indian States other than those arising out of the treaties and agreements and those embraced under the notion of Paramountcy. The concept of paramountcy has been vague and elastic and its content has differed widely from place to place and from time to time according to the dictates of policy. It allowed the British to tolerate grave misrule or gross oppression without feeling responsible for it; it enabled them, on the other hand, to interfere, if need be, in the minutest details of administration and of even personal behaviour.

PARAMOUNTCY ABSENT IN UNION

This useful and elastic means of dealing with the Indian States will not be available to the government of the Indian Union. The Union will wield only the powers ceded to it. There can neither be any general expansion of these powers nor any specially modified application in respect of a particular unit. The smallest Indian State will enjoy the same powers as the largest of Provinces and no differentiation, not initially and constitutionally provided for, can be later imported. For, any extension of power in respect of any particular unit will not only be a matter of adjudication but will also be opposed by all other units for fear of later repercussions on themselves. So that once an Indian State is admitted as of a given status, its position could not be changed, either in theory or in practice, except by a process of constitutional amendment.

AGREEMENTS WITH INDIAN STATES

None of the considerations noted above militate against alliances or understandings, temporary or permanent, on a variety of subjects with Indian States as a body or individually. A customs, postal or currency union, conventions as to diverse types of legislation, arrangements relating to railway and road transport or other matters, all can and should be sought with the Indian States. There is no question of non-co-operating with them. Only as long as their political structure is based on principles fundamentally different from and even opposed to the principles on which the structure of

democratic Provincial Governments is raised, can there be no question of the two forming parts of one integrated Union. The Union will be unable to guarantee territorial integrity or the continuation of a dynasty; to do either would be not only to risk a conflict with but also to promise aid in the suppression of a possible expression of popular wishes. Also, the Union could admit only such Indian States within the Union as have governments which are definitely constituted and with which the association of representatives of the people is such as to earn for them substantially the title of popular governments; and the Union will admit the Indian States as of a given status and belonging to a given Unit according to a rational plan of regional and constitutional organization drawn up for the whole of the Union.

RULERS' POSITION IN UNION

Such an attitude would neither be unreasonable in itself nor contrary to the interests of the people of the Indian States nor contrary even to the long-run interests of the rulers. It is obvious that it would not be contrary to the interests, and not probably also to the wishes, of the people of the Indian States. It would appear, however, as if the interests of the rulers must diverge. This is to take a superficial view. Growing popular demands and the growing requirements of a modern government no longer make the role of the ruler of an Indian State, especially a small one, as enviable as it was once thought to be. The position will grow many times worse the moment paramountcy disappears. A ruler who makes his terms with his subjects and with the Union immediately will make them at the most favourable time. He may be able today to claim and obtain some symbolic continuation of political right, even if the Indian State ceases to exist as an independent political unit in any other form; he will also obtain for his House comparatively favourable terms of financial settlement. The ruler, even of an Indian State which is destined for a merger in another unit according to the plan, should think twice before rejecting the offer of the Union. For, once the opportunity passes, the matter will be between himself and his subjects, and in the vast majority of instances the situation may in time be expected to grow steadily worse for the ruler. There is also no reason why the prospect should be unpleasant to rulers who would be asked to accept for their states the status of an autonomous district or of a sub-province. There will be vested in these units an appropriate measure of real political power, with no

external interference, such as they would have never enjoyed before. The perquisites of autocracy may vanish in a large measure; but the rulers of these Indian States will possess, even in their personal capacity, an important field for real constructive activity and leadership in their States, in their regions, and even in the Union, such as their ancient houses entitle them to and for which no opportunities have existed under the British, and which will not come to them if they cast themselves adrift from the Union.

APPENDIX

UNITS AND SUB-UNITS IN AN INDIAN UNION

In sections relating to the "Gradation of the Status of Indian States" and "The Composition of Federating Units," the principles on which primary political units in the Indian Union could be organised have been set out. A final judgment on the adoption of these principles will depend on seeing how they work out in practice. An attempt has been made in this Appendix to indicate approximately the boundaries and the composition of the population of the units and sub-units formed as a result of the application of these principles. Statistical data relating to the area, and the composition of population of the units according to community and according to mother-tongue are given in a table, and the statement that precedes the Table enumerates the districts and Indian States incorporated in each unit.

The primary areas out of which the units have been formed are the areas of individual districts and Indian States. The statistics of the Census are mostly available for districts and not for smaller units, and individual Indian States, however large, have been considered indivisible. In the actual demarcation of boundaries, the district will not be treated as the smallest unit. In most plebiscites conducted after 1919, the demarcation was made on the basis of the "commune" (village). The degree of homogeneity actually attained by the units will, therefore, be greater than that indicated in the Table.

The units given in the table have been formed by joining together the largest number of contiguous districts and Indian States with a politically homogeneous population. Two exceptions have been made to this rule. Firstly, the boundaries of Groups as laid down by the Cabinet Mission have been left undisturbed; secondly, where an existing Province was politically homogeneous, it has been retained as an independent unit and no attempt has been made to incorporate it into another unit, or reconstitute it in any other manner. Language and religion have been adopted as the two tests of political homogeneity; so that each of the units is the largest possible compact block of a population consisting chiefly of speakers of one language and followers of one religion. In areas where units, in which speakers of one language and followers of

one religion were in an absolute majority, could not be formed, they have been constituted on the basis of getting together the most numerous homogeneous population.

The composition of the population by communities is based on the results of the Census of 1941. The published returns of the 1941 Census do not contain figures regarding the mother-tongue of the whole population; for this purpose, the data of the 1931 Census have been used. The figures for some Groups of small Indian States are available for the Group as a whole and not for each Indian State separately; also the statistics for individual Indian States with a number of dispersed areas are available for the entire Indian State and not for each area. In such instances, the group of Indian States or the Indian State has been classified as a whole.

Among Indian States only Hyderabad and Kashmir have been treated as independent units. All the other Indian States have been incorporated in composite units, for reasons and in the manner indicated in the text. Details regarding provincial and Indian State territory included in a unit are shown separately in the table. The statistics regarding Indian States in each unit relate to Indian States whose territories are proposed to be merged in the Unit and the Indian States which will be retained as autonomous Sub-Units, taken together. The statistics regarding each autonomous Indian State are also shown separately. All Indian States which were entitled to representation by an independent seat either to the Council of State or to the Federal Assembly under the Government of India Act (1935) and all Indian States who had a population of over three lakhs in 1941 have been treated as autonomous units.

Explanations regarding the constitution of certain individual units are given in the following notes:

1. *Assam*: Difficulties are encountered in constituting a proper homogeneous unit for Assam because of the diversity of elements in the population of this region. The main religious groups in the region are Hindus, Muslims and Tribal, and the main language groups Assamese, Bengali and Tibeto-Burman. The Assamese Hindus and the tribal peoples speaking Tibeto-Burman languages are intermingled in the region and cannot be readily separated. It might become necessary, within Assam, to demarcate certain Tribal Areas and provide in a special way for their administration. These areas would still remain parts of Assam. The Bengali Muslims, on the other hand, are comparatively recent immigrants

and inhabit a well-marked zone contiguous to the main area of Muslim Bengal. The proper approach to the constitution of Assam is, therefore, found in the attempt to separate the area inhabited by the Assamese Hindu and Tribal peoples from that of the Bengali Muslims. This area is given by taking away Sylhet from the existing Province of Assam, and adding to Assam the Assam States, Tripura and the Chittagong Hill Tract from Bengal. The district of Goalpara has a majority of non-Muslims but a majority of speakers of Bengali. This is because it falls into two distinct parts. The southern half of the district is in the main Bengali Muslim and the northern half Assamese Hindu. The presence of a certain proportion of Bengali Hindus gives the particular result for the whole district. (Cf. Details, for each Thana, regarding the language statistics of Goalpara given in the Report of the Census of Assam, 1931, Chapter X, p. 187.) The district of Cachar has also similar features. It is clear that in this region the district area is too mixed to give even approximate results in a satisfactory manner. An appropriate division of the districts of Cachar and Goalpara is obviously necessary to demarcate the boundary between Assam and East Bengal.

2-3. *East Bengal and West Bengal:* The former is formed by taking together the dominant Muslim districts of the East and the neighbouring district of Sylhet in Assam. The latter by consolidating the compact area of the contiguous dominantly Hindu districts of the West. If it had been possible to ignore the boundary of Group C, the district of Manbhum from Bihar would, according to the tests adopted, have had to be added to West Bengal.

4. *North Bengal:* The division of the bulk of Bengal districts between Muslims in the east and the Hindus in the west leaves an inconvenient bit in the north. The district of Jalpaiguri and the Indian State of Cooch Behar are dominantly Hindu and Bengali, but are completely cut off from the rest of Hindu Bengal. Darjeeling and Sikkim, at present attached to Bengal, are not inhabited by speakers of Bengali, but are too small to be constituted a unit by themselves. The four areas together also do not constitute a large enough unit. They must be attached as, perhaps, Sub-Units to some other unit. If Bengal remains one federating unit, then obviously this unit will form part of Bengal, and no difficulty will arise. In case an Eastern Pakistan is created, this area will have to be attached to one of the two contiguous non-Muslim units, Assam and Bihar. It would be preferable to attach it to Assam with

which it has more social and economic features in common than with Bihar.

5-6-7. *Bihar; United Provinces; Delhi:* No problems of reconstitution are encountered within these areas. The Indian States in the United Provinces would be incorporated within that unit. No attempt has been made in this Appendix to tackle the problem of reorganisation, on regional lines, of the units in the block of territory inhabited by speakers of Hindi and Hindustani-Urdu.

8-9. *East Panjab; Central Panjab:* The central problem of the reconstitution of units in the Panjab is that of creating a Province or Sub-Province with the maximum concentration of Sikh population. The Central Panjab formed of certain districts of the Panjab and of the Indian States in the region gives the closest approximation to a Sikh home-land. Even in this region the Sikhs will not be the most numerous community unless, perhaps, some portions of the western districts included in the unit are joined to West Panjab. The creation of Central Panjab yields East Panjab as a by-product. This is seen to be a compact unit of very considerable homogeneity. It is really not a part of Panjab proper, as can be judged from the proportion of speakers of Panjabi within it. If it is possible to ignore the boundary between Groups A and B, it would be proper to include East Panjab in the reconstituted units of the Hindi-Hindustani-Urdu block.

10. *West Panjab:* This comprises the residual districts of the Panjab after the constitution of East and Central Panjab, together with the Indian State of Bahawalpur.

11-12-13-14. *Kashmir; North-West Frontier Province; Sind; Baluchistan:* No problems of reconstitution arise in these existing units. The Indian States in Baluchistan and Sind will be incorporated in those areas.

15. *Rajasthan:* This is proposed as comprising Ajmer-Merwara, the Rajputana Agency and that part of the Central India States which lies west of the districts of Jhansi and Saugor. Linguistic differences are not important in this area. The proposed unit will be almost exclusively made of Indian States' territory and will also have a measure of economic unity.

16. *Gujarat:* This is a linguistically homogeneous unit consisting of districts from the Province of Bombay and of the Indian

States of Gujarat and Kathiawar and the Indian States of Baroda and Cutch.

17. *Central Provinces (Hindi)*: The core of this unit is formed by the Hindi speaking districts of the Central Provinces remaining after the removal of the Marathi districts. To these are added the Chhattisgarh State and those States of the Central India Agency which lie east of the districts of Jhansi and Saugor.

18. *Maharashtra*: Formed of the Marathi-speaking districts of the Province of Bombay and the Central Provinces and Berar, together with the Indian States included within their area, and Kolhapur and Bastar. Bastar has been indicated as being included in this unit as the most numerous speakers of any language in its area are those of Halbi, which the Linguistic Survey classifies as a dialect of Marathi.

19. *Hyderabad State*: No reconstitution.

20. *Karnatak*: The districts of the Provinces of Bombay and Madras which have a dominant population of speakers of Kanarese and the Indian States included within their area and Mysore. This is one of the instances where the absence of details regarding Indian States' territory leads to inaccurate calculation. The territory of the Deccan States which will no longer retain their separate political entity will be divided between Maharashtra and Karnatak, according to linguistic affiliations of the different areas. The result of this division cannot be indicated for lack of complete statistics.

21. *Coorg*: No reconstitution.

22. *Kerala*: The Indian States of Travancore and Cochin and one district from the Province of Madras.

23. *Tamil Nad*: Districts with a dominant population of speakers of Tamil from the Province of Madras and the appropriate Indian States.

24. *Andhra*: Districts with a dominant population of speakers of Telugu from the Province of Madras and similar Indian State territory.

25. *Orissa*: The Province of Orissa, the Orissa States and Mayurbhanj.

The disposition of these twenty-five units shows the manner in which a minimum number of politically homogeneous units can,

in the present circumstances, be formed in India. They will not necessarily be all federating units. In the first instance, the process of actual demarcation of boundaries will be much finer than the building of units by joining together areas of districts and Indian States. And whether all the twenty-five will be full federating units depends on the future of Indian polity. Sind, Gujarat, Maharashtra, Karnatak, Kerala, Tamil Nad, Andhra, Orissa and Assam naturally form proper federating units. In some of these, sub-provinces and autonomous regions may have to be created for accommodating Indian States incorporated in them or to meet the special needs of any region. This will not affect the boundaries or unity of the federating units. The situation is indeterminate chiefly as regards the Hindi-Hindustani-Urdu block and Bengal and the Panjab. With the former there is no problem of political status, but merely one of convenience of administration and economic organisation. The future of the three units of Bengal and the Panjab depends on the future of the Indian Union. If a Union for the whole of India is achieved, a single federating unit can each be maintained for Bengal and the Panjab. It has been indicated in the text that it will still be necessary to have a separate Sub-Province for West Bengal; and there may be either one or two Sub-Provinces in the Hindu-Sikh majority area of the Panjab. However, in an Indian Union the federating units of Bengal and the Panjab need not be split. A complete partition will be inevitable if a separate Muslim federation comes into existence and in that event, each of the separate units in Bengal and the Panjab will become a full federating unit.

Pakistan, if it takes shape, will consist of two distinct and widely separated regions. The Eastern Pakistan will consist of the single unit of Eastern Bengal indicated in the table; the North-Western Pakistan will consist of the units of Sind, Baluchistan, N. W. Frontier Province and West Panjab, including the Indian States in the area. The approximate composition of the two parts of Pakistan will be as follows: (See Table on next page.)

PAKISTAN. 1941 CENSUS

	Area in Square Miles	COMMUNITIES						
		Total Population	Muslims	Caste Hindus	Scheduled Castes	Total Hindus	Sikhs	Tribals
		(in thousands)						
Eastern Pakistan								
Total	51,001	43,834	30,595	8,244	4,285	12,529	1	543
Percentage		100	69.80	18.81	9.78	28.58	—	1.24
North-Western Pakistan								
Total	203,639	26,949	20,499	3,668	395	4,063	1,921	38
Percentage		100	76.07	13.61	1.47	15.08	6.76	0.14
Districts	1,80,630	24,946	18,800	3,491	337	3,828	1,773	37
Percentage		100	75.36	13.99	1.35	15.34	7.11	0.15
States	1,03,029	2,003	1,699	177	58	235	48	1
Percentage		100	84.82	8.84	2.90	11.73	2.40	0.05
Total Pakistan								
Total	3,34,660	70,783	51,094	11,912	4,680	16,592	1,922	581
Percentage		100	72.18	16.83	6.61	23.44	2.57	0.82
Districts	2,31,631	68,780	49,595	11,733	4,622	16,357	1,774	580
Percentage		100	71.82	17.06	6.72	23.78	2.58	0.84
States	1,03,029	2,003	1,699	177	58	235	48	1
Percentage		100	84.82	8.84	2.90	11.73	2.40	0.50

Hindustan will comprise, in due course, and when all the Indian States within its boundaries accede, of all the remaining units except Kashmir and Hyderabad and its composition is indicated below.

HINDUSTAN. 1941 CENSUS

	Area in Square Miles	COMMUNITIES						
		Total Population	Caste Hindus	Scheduled Castes	Total Hindus	Muslims	Sikhs	Tribal
		(in thousands)						
Total Hindustan								
Total	10,54,050	2,95,444	1,83,104	41,082	2,24,186	35,763	3,793	24,141
Percentage		100.00	61.98	13.91	75.88	12.10	1.28	8.17
Districts	6,30,672	2,26,995	1,39,147	35,299	1,74,446	29,995	2,390	16,122
Percentage		100.00	61.30	15.55	76.85	13.21	1.05	7.10
States	4,23,378	68,449	43,957	5,793	49,750	5,768	1,403	8,019
Percentage		100.00	64.22	8.46	72.68	8.42	2.05	11.72

It is not expected that the States of Hyderabad and Kashmir will join either Pakistan or Hindustan; it is likely that Hyderabad may not accede even if there is an Indian Union. In both these instances the inclinations of the dynastic rulers and the political traditions of the Indian State run counter to the facts of the composition of the Indian States' population. It is only when full democratic governments are established in these Indian States that they may get incorporated into Hindustan and Pakistan. This is certain to happen with a democratised Hyderabad as it is not an independent geographical area by itself.

COMPOSITION OF POTENTIAL UNITS AND SUB-UNITS SHOWING
DISTRICTS AND INDIAN STATES INCORPORATED IN THEM

Constituent Unit	Incorporated Districts	Incorporated States	Autonomous States
I. Assam	<p>A. Assam Districts:</p> <p>(1) Cachar (2) Khasi and Jaintia Hills (3) Naga Hills (4) Lushai Hills (5) Kamrup (6) Darrang (7) Nowgong (8) Sibsagar (9) Lakhimpur (10) Garo Hills (11) Sadiya Frontier Tract (12) Balipara Frontier Tract (13) Goalpara.</p> <p>(B) Bengal Districts:</p> <p>(1) Chittagong Hill Tracts</p>	<p>A. Assam States</p> <p>(1) Manipur (2) Khasi</p> <p>B. Bengal States</p> <p>(1) Tripura</p>	<p>(1) Manipur (2) Tripura</p>
II. East Bengal	<p>A. Bengal Districts:</p> <p>(1) Nadia (2) Murshidabad (3) Jessore (4) Rajshahi (5) Dinajpore (6) Rangpur (7) Bogra (8) Pabna (9) Malda (10) Dacca (11) Mymensingh (12) Faridpur (13) Bakarganj (14) Tippera (15) Nankahal (16) Chittagong</p> <p>B. Assam Districts</p> <p>(1) Sylhet</p>		
III. West Bengal	<p>Bengal Districts:</p> <p>(1) Burdwan (2) Birbhum (3) Bankura (4) Midnapore (5) Hooghly (6) Howrah (7) 24 Parganas (8) Calcutta (9) Khulna.</p>		
IV. North Bengal	<p>(A) Bengal Districts:</p> <p>(1) Jalpaiguri (2) Darjeeling</p>	<p>(1) Sikkim State (2) Cooch Behar (from Bengal States)</p>	<p>(1) Sikkim (2) Cooch Behar</p>
V. Bihar	<p>"Bihar" Province</p> <p>All Districts</p>		
VI. United Provinces	<p>Province of "U. P."</p> <p>All Districts</p>	<p>U. P. States</p> <p>(1) Rampur (2) Benares</p>	<p>(1) Rampur (2) Benares</p>
VII. Delhi	<p>Delhi (Commissioner's Province)</p>		
VIII. East Punjab	<p>Panjab Districts:</p> <p>(1) Hissar (2) Rohtak (3) Gurgaon (4) Karnal (5) Ambala (6) Simla (7) Kangra.</p>	<p>Panjab States (including Hill States)</p> <p>(1) Dujana (2) Pataudi (3) Loharu (4) Mandi (5) Sohet (6) Chamba (7) Jind (8) Tehri Garhwal (9) Kalua (10) Sirmoor (11) Bilaspur (12) Other States from Panjab Hill States</p>	<p>(1) Tehri-Garhwal (2) Jind</p>
IX. Central Panjab	<p>Panjab Districts:</p> <p>(1) Hoshiarpur (2) Jullunder (3) Ludhiana (4) Ferozpur (5) Amritsar</p>	<p>Panjab States:</p> <p>(1) Kapurthala (2) Malerkotla (3) Nabha (3) Faridkot (4) Patiala</p>	<p>(1) Kapurthala (2) Nabha (3) Patiala</p>

Constituent Unit	Incorporated Districts	Incorporated States	Autonomous States
X. West Punjab	Panjab Districts: (1) Lahore (2) Gurdaspur (3) Sialkot (4) Gujranwala (5) Sheikhupura (6) Gujrat (7) Shahpur (8) Jhelum (9) Rawalpindi (10) Attock (11) Mianwali (12) Montgomery (13) Lyallpur (14) Jhang (15) Multan (16) Muzaffargarh (17) Dera Gazi Khan (18) Biloch Trans-frontier Tract	Panjab States: (1) Bahawalpur	(1) Bahawalpur
XI. Kashmir	—	Kashmir State	(1) Kashmir
XII. Northwest Frontier Province	The Province of N. W. F. P. All Districts	—	
XIII. Baluchistan	The Province of Baluchistan All Districts	Baluchistan States (1) Kalat (2) Karan (3) Las Bela	(1) Kalat
XIV. Sind	The Province of Sind All Districts	(1) Khairpur State	(1) Khairpur
XV. Rajasthan	(1) Ajmer-Merwara (2) Abu District (3) Pantiploda (4) Khaniadahanu (Gwalior Residency)	A. Rajputana States: 1) Alwar (2) Banswara (3) Bharatpur (4) Bikaner (5) Bundi (6) Danta (7) Dholpur (8) Dungarpur (9) Jaipur (10) Jaisalmer (11) Jhalawar (12) Karauli (13) Kishengarh (14) Kotah (15) Kushalgarh (Chieftainship) (16) Lawa (Estate) (17) Marwar (18) Mewar (19) Palanpur (20) Partabgarh (21) Shahpura (22) Sirohi (23) Tonk B. C. I. States: (1) Indore (2) Bhopal C. C. I. Agencies: (1) Bhopal (2) Malwa D. Gwalior State	(1) Alwar (2) Bharatpur (3) Bikaner (4) Jaipur (5) Kotah (6) Marwar (7) Mewar (8) Tonk (9) Indore (10) Bhopal (11) Gwalior (12) Dhar
XVI. Gujarat	Districts from Bombay (1) Ahmedabad (2) Ahmedabad City (3) Broach and Panch Mahals (4) Kaira (5) Surat	A. Western India States Agency: (1) Bhavnagar (2) Dhrangadhra (3) Dhol (4) Gondal (5) Idar (6) Jafrabad (7) Porbandar (8) Radhanpur (9) Palitona (10) Nawanagar (11) Limbdi (12) Vijayanagar (13) Morvi (14) Rajkot (15) Wadhwan (16) Wankaner (17) Cutch (18) Junagadh (19) Western Kathiawar Agency (20) Eastern Kathiawar Agency (21) Sabar Kantha Agency B. Gujarat States (1) Lunavada (2) Rajpipla (3) Balsasinor (4) Baria (5) Cambay (6) Chota Udespur (7) Sachin (8) Sant (9) Dharampur (10) Rest of Gujarat States Agency C. Baroda State	(1) Bhavnagar (2) Idar (3) Nawanagar (4) Junagadh (5) Cutch (6) Baroda

Constituent Unit	Incorporated Districts	Incorporated States	Autonomous States
XVII. Central Provinces	Central Provinces: (1) Saugor (2) Jabulpore (3) Mandla (4) Hoshangabad (5) Nimar (6) Betul (7) Chhindwara (8) Balaghat (9) Raipur (10) Bilaspur (11) Drug	A. Central India States (1) Rewa B. Central India Agency (1) Bundelkhand C. Chattisgarh States (1) Chagbhakar (2) Chhuikhadan (3) Jashpur (4) Kanker (5) Kawardha (6) Khairagarh (7) Koren (8) Nandgaon (9) Raigarh (10) Sakti (11) Sarangurh (12) Surguja (13) Udaipur	(1) Rewa (2) Surguja
XVIII. Maharashtra	A. Bombay Province: (1) Bombay City (2) Bombay Suburban (3) Thana (4) Ahmednagar (5) East Khandesh (6) West Khandesh (7) Poona (8) Nasik (9) Satara (10) Shriapur (11) Ratnagiri (12) Kolaba B. C. P. and Berar: (1) Wardha (2) Nagpur (3) Chanda (4) Bhandara (5) Amraoti (6) Akola (7) Buldana (8) Yestimal	Sates A. Gujarat States (1) Surgana (2) Dangs (3) Jawhar (4) Bansda B. Deccan and Kolhapur States: (1) Junjira (2) Bhur (3) Aundh (4) Phaltan (5) Savantwadi (6) Kolhapur (7) Aliraj Sr. (8) Miraj Jr. (9) Sangli (10) Kurundwad Sr. (11) Kurundwad Jr. C. Chattisgarh Agency (1) Jharkur	(1) Kolhapur (2) Bastar
XIX. Hyderabad State	—	Hyderabad State (Whole)	(1) Hyderabad
XX. Karnatak	A. Bombay Province: (1) Belgaum (2) Bijapur (3) Dharwar (4) Kanara B. Madras Province: (1) Bellary	A. Deccan and Kolhapur States: (1) Akalkot (2) Jamkhindi (3) Wadi (4) Sawanur (5) Ramdurg (6) Jath (7) Mudhol B. Mysore State C. Madras States (1) Sandur	(1) Mysore
XXI. Coorg	(1) Coorg (Commissioner's Province)	—	—
XXII. Kerala	A. Madras Presidency: (1) Malabar (2) South Kanara	(1) Cochin (2) Travancore	(1) Cochin (2) Travancore
XXIII. Tamilnad	Madras Presidency: (1) Madras (2) Chingleput (3) North Arcot (4) Salem (5) Coimbatore (6) South Arcot (7) Tanjore (8) Trichinopoly (9) Madura (10) Ramnad (11) Tinnevely (12) Nilgiris	Madras States (1) Pudukottai	—
XXIV. Andhra	Madras Presidency: (1) Vizagapatnam (2) East Godavari (3) West Godavari (4) Kistna (5) Guntoor (6) Nellore (7) Cudappah (8) Kurnool (9) Anantpur (10) Chittoor	Madra States: (1) Banganpalle	—

Constituent Unit	Incorporated Districts	Incorporated States	Autonomous States
XXV. Orissa	Orissa Province All Districts	A. Bengal States (1) Mayurbhanj B. Chhattisgarh Agency (1) Patna (2) Kalahandi C. Orissa States (1) Athgarh (2) Talchar (3) Nilgiri (4) Keonjhar (5) Pal Lahara (6) Athmalik (7) Dhenkanal (8) Hindol (9) Narasinghpur (10) Baramba (11) Tigiria (12) Khandpara (13) Nayagarh (14) Ranpur (15) Daspatha (16) Baudh (17) Banura (18) Kairakhol (19) Sonapur (20) Bonai (21) Gangpur (22) Seraikela (23) Kharsawan	(1) Mayurbhanj (2) Patna (3) Kalahandi (4) Keonjhar (5) Sonapur (6) Gangpur

POPULATION OF POTENTIAL UNITS AND SUB-UNITS CLASSIFIED
BY COMMUNITIES AND SPEAKERS OF VARIOUS LANGUAGES

No. of Unit	Name of Unit	1941 CENSUS						1931 CENSUS									
		COMMUNITIES						SPEAKERS OF VARIOUS LANGUAGES									
		Area in Square Miles	Caste Hindus	Scheduled Castes	Total Hindus	Muslims	Others	Total Population	Total Population	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
1.	Assam Districts States	71,004 54,480 16,524	3,420 2,757 664	324 319 12	3,744 3,069 676	1,713 1,338 133	3,624 2,649 373	8,574 7,333 1,239	7,119 6,111 1,008	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
	Manipur	8,620	304	—	304	23	133	512	446	—	—	—	—	—	—	—	—
	Tripura	4,116	336	12	348	124	54	513	383	—	—	—	—	—	—	—	—
2.	East Bengal	51,001	8,244	4,285	12,529	30,593	513	43,834	37,075	Bengali 36,617	—	—	—	—	—	—	—
3.	West Bengal	22,670	9,840	3,104	12,944	4,034	762	17,876	14,248	Bengali 12,348	Hindi 682	—	—	—	—	—	—
4.	North Bengal Districts States	8,305 4,242 4,063	1,610 376 234	561 354 207	1,171 730 441	503 261 242	486 421 65	2,223 1,466 762	2,004 1,303 701	Bengali 1,251 1,303 575	Hindi 139 146 13	—	—	—	—	—	—
	Sikkim	2,745	46	—	46	—	63	122	110	—	—	—	—	—	—	—	—
	Cooch Behar	1,318	189	206	395	242	2	640	591	—	—	—	—	—	—	—	—
5.	Bihar	69,745	22,174	4,340	26,514	4,716	3,536	35,340	32,371	Hindi 27,567	Bengali 1,316	—	—	—	—	—	—
6.	United Provinces Districts States	1,08,007 1,06,247 1,760	34,300 34,085 494	11,670 11,717 153	46,459 45,812 647	8,690 8,416 274	293 289 4	55,940 55,001 938	40,263 40,400 867	Hindi 40,107 40,231 856	—	—	—	—	—	—	—
	Rampur	894	182	56	238	236	—	477	463	—	—	—	—	—	—	—	—
	Benares	866	312	97	409	36	4	451	392	—	—	—	—	—	—	—	—

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No. of Unit	Name of Unit	1941 CENSUS										1941 CENSUS										SPEAKERS OF VARIOUS LANGUAGES																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																															
		COMMUNITIES										Total Population	Total Population										Total Population	Total Population																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																													
		Caste Hindus	Scheduled Castes	Total Muslims	Muslims	Tribals	Sikhs	Total Population										Total Population	Total Population																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																		
								Area in Square Miles	Hindus	Castes	Total		Muslims	Muslims	Tribals	Sikhs	Hindus		West Pahari	West Pahari	West Pahari	West Pahari		West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West Pahari	West 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No. of Unit	Name of Unit	1941 CENSUS										1931 CENSUS									
		Area in Square Miles	COMMUNITIES					Total Population	SPEAKERS OF VARIOUS LANGUAGES					Total Population							
			Caste Hindus	Scheduled Castes	Total Hindus	Muslims	Others	Sikhs													
14.	Sind Districts State (Khairopur)	54,125 48,136 5,989	1,280 1,230 50	— — —	1,280 1,230 50	3,452 3,206 254	38 37 1	32 31 1	4,841 4,535 306	4,114 3,867 247	1,000 1,000 1,000	1,000 1,000 1,000	1,000 1,000 1,000	1,000 1,000 1,000	1,000 1,000 1,000	1,000 1,000 1,000	1,000 1,000 1,000	1,000 1,000 1,000	1,000 1,000 1,000	1,000 1,000 1,000	1,000 1,000 1,000
15.	Rajasthan Districts States	1,08,744 2,532 1,06,212	— — —	— — —	16,782 408 16,373	1,974 92 1,883	2,987 64 2,924	— — —	22,213 614 21,599	19,478 367 19,111	1,000 1,000 1,000	1,000 1,000 1,000	1,000 1,000 1,000	1,000 1,000 1,000	1,000 1,000 1,000	1,000 1,000 1,000	1,000 1,000 1,000	1,000 1,000 1,000	1,000 1,000 1,000	1,000 1,000 1,000	1,000 1,000 1,000
	Alwar	3,158	539	—	339	228	58	—	823	750	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
	Bharatpur	1,078	449	—	449	110	14	—	576	437	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
	Bhopal	6,921	187	—	597	110	71	—	735	437	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
	Bikaner	28,181	992	—	597	110	71	—	1,292	730	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
	Jaipur	26,367	—	—	3,463	241	243	—	4,006	3,333	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
	Indore	9,994	—	298	1,079	126	283	—	1,314	1,316	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
	Jaipur	15,610	—	—	2,464	249	294	—	3,041	2,432	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
	Jodhpur (Marwar)	36,120	—	—	2,123	214	96	—	2,549	2,123	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
	Korah	5,714	—	—	2,123	214	96	—	2,549	2,123	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
	Palampur	1,794	—	—	984	33	109	—	716	664	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
	Tonk	9,545	—	—	984	33	109	—	716	664	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
	Udaipur (Mewar)	13,170	—	—	2,239	21	21	—	341	317	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
	Dhar	1,798	114	25	1,334	69	451	—	1,973	1,567	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
16.	Gujarat Districts	61,915 10,580	— —	994 294	9,814 2,861	1,356 488	1,398 603	—	13,059 4,053	10,842 3,146	1,000 1,000	1,000 1,000	1,000 1,000	1,000 1,000	1,000 1,000	1,000 1,000	1,000 1,000	1,000 1,000	1,000 1,000	1,000 1,000	1,000 1,000

